63D CONGRESS
2d Session

SENATE

Doc. No. 545
Part 2

NOMINATION OF THOMAS D. JONES

HEARING

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE

SIXTY-THIRD CONGRESS, SECOND SESSION

ON

THE NOMINATION OF THOMAS D. JONES FOR APPOINTMENT AS A MEMBER OF THE FEDERAL RESERVE BOARD

INJUNCTION OF SECRECY REMOVED JULY 21, 1914

PRESENTED BY MR. REED

JULY 15, 1914.—Ordered to be printed

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THE NOMINATION OF THOMAS D. JONES FOR APPOINTMENT AS A MEMBER OF THE FEDERAL RESERVE BOARD.

THURSDAY, JULY 9, 1914.

COMMITTEE ON BANKING AND CURRENCY,
UNITED STATES SENATE,
Washington, D. C.

The committee assembled in executive session at 10.30 o'clock a. m.

Present: Senators Hitchcock (acting chairman), Reed, Pomerene, Shafroth, Hollis, Lee, Nelson, Bristow, Crawford, McLean, and Weeks.

Senator REED. Mr. Chairman, in the matter of the confirmation of Mr. Thomas D. Jones, I desire to put into the record, for the information of the committee and the Senate and because it was a matter referred to in the testimony of Mr. Jones and is otherwise pertinent, the following from the records of the case of the State of Missouri, on the relation of Herbert S. Hadley, attorney general, versus The International Harvester Co. of America, the corporation respondent:

First. The information in quo warranto as it appears in the printed transcript of the record on file in the Supreme Court of the United States, pages 3 to 7, inclusive.

Second. The order of the court to the International Harvester Co. to show cause, page 8.

Third. The answer of the defendant—or, it should be more properly described as—the return of the writ, including in the answer also the exhibits attached. Pages 9 to 34, inclusive.

Fourth. The replication filed by the State of Missouri, pages 36 to 38, inclusive.

Fifth. The order of the Supreme Court by Judge Theodore Brace as the special commissioner, pages 38 and 39.

Sixth. I put in evidence also the oath of office of the special commissioner, page 40.

Seventh. I put in evidence, but do not ask to have printed now, the entire record so that it may be considered by any member of the committee with the testimony.

Eight. The report of the commissioner, which was filed September 6, 1910, pages 821 to 883, inclusive.

Ninth. The judgment and decree which was entered by the Supreme Court, pages 898 to 912, inclusive.

Tenth. The modification of the order of ouster and the bond of the International Harvester Co., pages 928 to 931, inclusive, and pages 935 and 936.

Eleventh. The decision of the Supreme Court of the United States in this same case, so that it may all be in evidence, Senate Document No. 498.

(The papers referred to are as follows:)

In the Supreme Court of Missouri. Court en banc. October term, 1907.

STATE OF MISSOURI ON THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, *vs.* INTERNATIONAL HARVESTER COMPANY OF AMERICA, A CORPORATION, RESPONDENT.

INFORMATION IN QUO WARRANTO.

Comes now the State of Missouri, by Herbert S. Hadley, attorney general, who, in this behalf, prosecutes for and in the name of the State, and informs the court that the International Harvester Company of America is a corporation, duly organized and existing under the laws of the State of Wisconsin and engaged in the manufacture and sale of agricultural implements, tools, and machinery and materials used therewith; that upon April 5, 1892, said International Harvester Company of America was duly authorized and licensed to do business in the State of Missouri as a foreign corporation under the name of the Milwaukee Harvester Company; that thereafter its name was changed to the International Harvester Company of America, and since on or about the 18th day of September, 1902, said respondent has, under the name of the International Harvester Company of America, been licensed to and engaged in the business of manufacturing and selling farm implements, tools, and machinery in the State of Missouri.

That the McCormick Harvesting Machine Company is a corporation, organized and existing under the laws of the State of Illinois, for the purpose of engaging in the manufacture and sale of agricultural implements, tools, and machinery, and was, upon the 5th day of October, 1891, duly authorized and licensed as a foreign corporation to engage in said business in the State of Missouri, and thereafter, and up to about the 18th day of September, 1902, did engage in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri.

That the Plano Manufacturing Company is a corporation duly organized and existing under the laws of the State of Illinois, for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, and was duly authorized and licensed on the 11th day of February, 1892, as a foreign corporation to do business in the State of Missouri, and that from said date up until about the 18th day of September, 1902, said company did engage in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri.

That the Warder, Bushnell & Glessner Company is a corporation duly organized and existing under the laws of the State of Ohio for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, and was duly authorized and licensed on the 29th day of August, 1891, as a foreign corporation to do business in the State of Missouri, and that from said date up until about the 18th day of September, 1902, said company did engage in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri.

That D. M. Osborne & Company is a corporation duly organized and licensed under the laws of the State of New York for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, and was duly authorized and licensed on the 28th day of September, 1891, as a foreign corporation to do business in the State of Missouri, and that from said date up until about the 18th day of September, 1902, said company did engage in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri.

That Aultman, Miller & Company is a corporation duly organized and existing under the laws of the State of New York for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery and was duly authorized and licensed on the 6th day of August, 1891, as a foreign corporation to do business in the State of Missouri, and that from said date up until about the 18th day of September, 1902, said company did engage in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri.

That from the time each and all of said companies were duly authorized and licensed to do business in the State of Missouri, and up until on or about the 18th of September, 1902, they continued to engage in the manufacturing and sale of agricultural implements, tools, and machinery in the State of Missouri as legitimate competitors with each other, and other corporations, individuals, and partnerships engaged in the

same business in the State of Missouri, and that thereby the people of the State, particularly the retail dealers and the farmers of the State, received the benefit of competition in the purchase and sale of farm implements, tools, and machinery; that on or about the 12th day of August, 1902, there was organized in the State of New Jersey, as a corporation of that State, the International Harvester Company, with a capital stock of $120,000,000, and said company was by its charter, authorized to engage in the manufacture and sale of all kinds of farm implements, tools, and machinery; that said International Harvester Company was organized under the laws of the State of New Jersey for the purpose of effecting a combination, pool, trust, agreement, understanding, and arrangement of the corporations hereinbefore referred to, and other corporations engaged in the same business in other States, for the purpose of restraining trade and competition in the manufacture, purchase, and sale of agricultural implements, tools, and machinery in this State; for the purpose of regulating, controlling, fixing, and maintaining the price of agricultural implements, tools, and machinery sold and offered for sale in this State; for the purpose of limiting and fixing the amount and quantity of agricultural implements, tools, and machinery sold and offered for sale in this State, and said pool, trust, combination, and understanding into which said corporations thus entered, became members of, and participated was designed and made with a view to increase, and tended to increase, the market price of agricultural implements, tools, and machinery sold and offered for sale in this State; was designed and made with a view to lessen, and tended to lessen, free competition in this State in the manufacture, purchase, and sale of agricultural implements, tools, and machinery; that shortly after the organization of said International Harvester Company of New Jersey, and in furtherance of the unlawful purposes aforesaid, it pretended to purchase and did acquire and come into the control of the capital stock and assets of all of said corporations, which had previously been engaged in the State of Missouri as legitimate competitors in the manufacture, purchase, and sale of farm implements, tools, and machinery; that said pretended sale and transfer of the capital stock and assets of said corporations to the International Harvester Company of New Jersey was accomplished by said International Harvester Company of New Jersey paying for the assets and stock of the several corporations in stock issued by said International Harvester Company of New Jersey, and the stockholders of the corporations hereinbefore referred to doing business in the State of Missouri became stockholders, directors, and officers of said International Harvester Company of New Jersey; that the transfers by said corporations doing business in the State of Missouri of their stock and assets to the International Harvester Company of New Jersey were effected on or about the 18th of September, 1902, on which date, and in which manner said corporations entered into and became members of said pool, trust, combination, and agreement for the unlawful purposes heretofore stated; that as a part of the plan of said pool, trust, combination, and agreement, and in furtherance of the unlawful purposes thereof, the business and assets of the McCormick Harvesting Machine Company, Plano Manufacturing Company, Warder, Bushnell & Glessner Company, D. M. Osborne & Company, and Aultman, Miller & Company in the State of Missouri, were in a short time after the 18th of September, 1902, transferred to the International Harvester Company of America, and said McCormick Harvesting Machine Company, Plano Manufacturing Company, Warder, Bushnell & Glessner Company, D. M. Osborne & Company and Aultman, Miller & Company in a short time thereafter ceased to do business in the State of Missouri and canceled and surrendered their licenses to do business in the State of Missouri; that by virtue of the formation of the pool, trust, combination, and agreement of the corporation herein named, through the organization of said International Harvester Company of New Jersey and its pretended purchase of their stock and assets, said International Harvester Company of New Jersey secured the right to manufacture and sell all the agricultural implements, tools, and machinery, under the various patents and devices theretofore manufactured and sold by said several corporations which were authorized to and engaged in business in this State; that since the formation of said pool, trust, combination, and agreement as aforesaid, and in the furtherance and by reason thereof, the International Harvester Company of New Jersey has maintained the existence and continued the International Harvester Company of America in the business of selling agricultural implements, tools, and machinery in this State, and said International Harvester Company of America has since acted as the sole agent in this State for the International Harvester Company of New Jersey in the sale of the agricultural implements, tools, and machinery manufactured by it, and also those which prior thereto had been manufactured and sold by each of said other companies herein named; and said International Harvester Company of America, by reason of said pool, trust, combination, and agreement, has bought and sold only the agricultural implements, tools, and machinery manufactured by it and the International Harvester Company of New Jersey, and said International Harvester Company of New Jersey

has, by virtue of said pool, trust, combination, and agreement and the ownership of the stock of the International Harvester Company of America, controlled, conducted, and directed all the business, affairs, and operations in the State of Missouri and elsewhere of the International Harvester Company of America; that since the formation of said pool, trust, combination, and agreement, as aforesaid, in furtherance thereof, and for the purpose of giving to said respondent and the International Harvester Company of New Jersey a monopoly of the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri, and for the purpose of preventing competition in the sale thereof, said respondent has compelled the retail dealers in each county of the State, who desire to handle and sell or act as agent for the sale of any of the agricultural implements, tools, and machinery sold or handled by said respondent to refrain from selling any agricultural implements, tools, and machinery manufactured or sold by any competing manufacturer or distributor which came into competition with the agricultural implements, tools, and machinery sold and handled by respondent; that by virtue of said pool, trust, combination, and agreement so organized as aforesaid, and by virtue of the exclusive contracts exacted and required from retail implement dealers in the State of Missouri by said respondent as aforesaid, competition in the manufacture, purchase, and sale of agricultural implements, tools, and machinery in the State of Missouri has been restrained, prices thereof have been controlled, fixed, and maintained, the amount and quantity of agricultural implements, tools, and machinery manufactured and sold in this State have been fixed and limited, the market price thereof has been increased and full and free competition in the manufacture, purchase, and sale of agricultural implements, tools, and machinery in the State of Missouri has been lessened and restrained so that said respondent has been able to secure, and for several years has enjoyed from 85 to 90 per cent of the business of manufacturing and selling agricultural implements, tools, and machinery in this State; all to the great damage and loss of the people of Missouri

That by reason of the participation by said respondent in the pool, trust, combination and agreement as herein stated, and by reason of the acts and things done by said respondent as herein set forth, said respondent has been guilty of an illegal, wilful, and malicious perversion and abuse of the franchises, privileges, license, and authority granted to it by the State of Missouri, and an illegal and unlawful usurpation of privileges, franchises, and authorities not granted to it by the State of Missouri.

Wherefore the attorney general, prosecuting in this behalf for the State, prays the consideration of the court in the premises, and that the respondent may be excluded from all corporate rights, privileges, and franchises exercised or enjoyed by it under the laws of the State of Missouri, and that its franchise, license, and certificate to do business in this State be declared forfeited, and that all or such portion of its property, as the court may deem proper, be confiscated unto the State, or in lieu thereof a fine be imposed upon it in punishment of the perversion, usurpation, abuse, and misuse of franchise, as herein described.

HERBERT S. HADLEY,
Attorney General.
FRANK BLAKE,
Assistant Attorney General.

In the Supreme Court of Missouri. Court en banc. October term, 1907.

STATE OF MISSOURI ON THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, *vs.* INTERNATIONAL HARVESTER COMPANY OF AMERICA, A CORPORATION, RESPONDENT.

ORDER TO SHOW CAUSE.

To International Harvester Company of America, respondent, greeting:

Whereas Herbert S. Hadley, attorney general of the State of Missouri, has filed an information in quo warranto, a copy of which is hereto attached and made a part hereof, charging that the above-named respondent, International Harvester Company of America, is unlawfully abusing its rights and franchises and unlawfully usurping authorities and privileges as a corporation under the laws of Missouri by entering into and becoming a member of a pool, trust, combination, confederation, agreement, and understanding, as therein charged and set forth, and asking that a writ of quo warranto issue directed to said respondent;

Now, therefore, you, the said respondent, International Harvester Company of America, are hereby commanded to be and appear before the Supreme Court of Missouri, en banc, upon the 15th day of December, A. D. 1907, and show by what warrant

or authority you claim to hold, use, and exercise corporate rights, privileges, and franchises under the laws of the State of Missouri, and why you should not be ousted from the rights, authority, license, and certificate to do business under the laws of the State of Missouri.

Witness my hand as clerk of the Supreme Court of the State of Missouri, and the seal of said court hereto affixed.

Done at my office in the city of Jefferson, county of Cole, State aforesaid, this 12th day of November, A. D. 1907.

JNO. R. GREEN, *Clerk*,
By O. T. JOHNSON, *D. C.*

ANSWER.

In the Supreme Court of Missouri. Court en banc. October term, 1907.

STATE OF MISSOURI ON THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, *vs.* INTERNATIONAL HARVESTER COMPANY OF AMERICA, A CORPORATION, RESPONDENT.

Comes now International Harvester Company of America, respondent in the above entitled cause, and for answer to the information in quo warranto filed against it, and for return to the order to show cause issued upon such information, respondent respectively shows to the court as follows:

I.

That the International Harvester Company of America is a corporation, originally organized as Parker-Dennet Harvesting Machine Company (Limited), under the laws of the State of Wisconsin, on the 15th day of December, 1881, and is now existing by virtue of said organization and subsequent changes in its name and charter; and that it was licensed to do business in the State of Missouri as a foreign corporation on April 5th, 1892, under its then name of Milwaukee Harvester Company; that respondent, having complied with the statutes of said State authorizing foreign corporations to do business therein, and having paid the sum of seventy-six dollars and fifty cents ($76.50), to the State of Missouri, the said State of Missouri did on the 5th day of April, 1892, in consideration of such payment and action on the part of respondent, agree and contract with respondent that respondent might engage in its business in the said State from said date until December 12th, 1931, and did by its license, issued under the seal of said State, authorize respondent to so carry on its business in the State aforesaid, a copy of which authority and contract is herewith attached and marked Exhibit "A," and that in pursuance and upon the faith of said license, franchise, and contract, respondent has invested large sums of money, to wit, in excess of six thousand dollars in the purchase of lands and buildings and other property in said State for its use in conducting said business in said State of Missouri, and ever since said date respondent has been engaged and is now engaged in conducting its business in the said State, as hereinafter set out, and still owns and uses in its said business much of the property acquired as aforesaid; that said name of Milwaukee Harvester Company became its name on November 21st, 1884, and was thereafter, on September 6th, 1902, duly changed to its present name, International Harvester Company of America; that it is not now manufacturing, and never has manufactured, any farm implements, tools, or machinery in the State of Missouri, and it has not manufactured in any place any of said articles for more than five years last past.

That respondent herein has at all times and in all acts, things, and matters whatsoever, obeyed the laws of the State of Missouri and of the United States, and has not been in the past, nor is it now, guilty of any illegal, willful, or malicious perversion or abuse of the franchise, privilege, license, and authority granted to it by the State of Missouri, nor has it in the past usurped, as it charged in the information herein filed against it, nor is it now illegally or unlawfully usurping any privileges, franchises, or authorities in the State of Missouri not granted to it by the State of Missouri; and of the legality and lawful authority of its corporate existence, business, and conduct within the State of Missouri, respondent prays judgment of this honorable court. And in order that the court may be fully informed of the facts concerning which the information in quo warranto has been presented herein, respondent makes this answer and return, and further states:

II.

That the allegations of this Paragraph II are not within the personal knowledge of respondent, but respondent is informed and believes, and for the purposes of this proceeding admits, and states on information and belief, that the McCormick Harvesting Machine Company is a corporation, and was organized and existing under and by virtue of the laws of the State of Illinois for the purpose of engaging in the manufacture and sale of agricultural implements, tools, and machinery; and that on the 5th day of October, 1891, said McCormick Harvesting Machine Company was duly authorized and licensed as a foreign corporation to engage in said business in the State of Missouri, and that from said date up until on or about the 12th day of August, 1902, said McCormick Harvesting Machine Company did sell agricultural implements, tools, and machinery to the State of Missouri; but that it did not at any time manufacture any such implements, tools, or machinery in the State of Missouri.

III.

That the allegations in this Paragraph III are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purposes of this proceeding admits, and states on information and belief, that The Plano Manufacturing Company is a corporation, and was duly organized and existing under the laws of the State of Illinois for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, and was duly authorized and licensed on the 11th day of February, 1892, as a foreign corporation to do business in the State of Missouri, and that from said date up until on or about the 12th day of August, 1902, said The Plano Manufacturing Company did sell agricultural implements, tools, and machinery, in the State of Missouri; but that it did not at any time manufacture any such implements, tools, or machinery in the State of Missouri.

IV.

That the allegations in this Paragraph IV are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purposes of this proceeding admits, and states on information and belief that the Warder, Bushnell and Glessner Company is a corporation and was duly organized and existing under and by the laws of the State of Ohio for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools and machinery, and was duly authorized and licensed on the 29th day of August, 1891, as a foreign corporation to do business in the State of Missouri, and that from said date up and until on or about the 12th day of August, 1902, said company did engage in the business of selling agricultural implements, tools, and machinery in the State of Missouri; but that it did not at any time manufacture any such implements, tools, or machinery in the State of Missouri.

V.

That the allegations in this Paragraph V are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purpose of this proceeding admits, and states on information and belief that D. M. Osborne and Company is a corporation, and was duly organized and existing under and by the laws of the State of New York for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, and was duly authorized and licensed on the 28th day of September, 1891, as a foreign corporation to do business in the State of Missouri, and that from said date up until on or about December, 1904, said D. M. Osborne and Company did continuously engage in the business of selling agricultural implements, tools, and machinery in the State of Missouri; but that it did not at any time manufacture any such implements, tools, or machinery in the State of Missouri.

VI.

That the allegations in this Paragraph VI are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purpose of this proceeding admits, and states on information and belief, that Aultman, Miller and Company was a corporation, duly organized and existing under by the laws of the State of Ohio for the purpose of engaging in the business of manufacturing and selling agricultural implements, tools, and machinery, but was not a corporation of the State of New York, and it was duly authorized and licensed on or about the 6th day of August, 1891, as a foreign corporation to do business in the State of Missouri, and that

from said date up until its bankruptcy in 1903 it engaged in the business of selling agricultural implements, tools, and machinery in the State of Missouri; but that it did not at any time manufacture any such implements, tools, or machinery in the State of Missouri. That some time prior to July, 1903, said Aultman, Miller and Company went into bankruptcy, and that afterward in said year of 1903 the trustee in said bankruptcy proceeding sold its manufacturing plant, property, product, and business to the Aultman and Miller Buckeye Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio.

VII.

That the allegations in this Paragraph VII, except so far as they relate directly to respondent herein, are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purposes of this proceeding admits, and states on information and belief, that respondent and said McCormick Harvesting Machine Company, and said The Plano Manufacturing Company, and said The Warder, Bushnell and Glessner Company, and said D. M. Osborne and Company, and said Aultman, Miller and Company were competitors one with another and with other corporations, individuals, and partnership in the sale of agricultural implements, tools, and machinery in the State of Missouri up to, on, or about August 12th, 1902; that said D. M. Osborne and Company continued in said business in said State for some time after said August 12th, 1902, but has since ceased to engage in said business, and that said Aultman, Miller and Company continued to engage in said business in said State up to the time of its bankruptcy in the year 1903.

That on or about the 12th day of August, 1902, there was organized in the State of New Jersey, as a corporation of that State, the International Harvester Company with a capital stock of $120,000,000.00, and that said company was by its charter authorized and licensed to engage in the manufacture and sale of all kinds of farm implements, tools, and machinery; that said company was a new corporation, planned, organized, and financed for the purpose of acquiring the materials, plants, manufacturing facilities, patent rights, and all other property and resources necessary or proper to enable it fully to carry out its corporate purposes of manufacturing and selling all kinds of farm implements, tools, and machinery; that thereupon, to accomplish its corporate purposes, said International Harvester Company of New Jersey did on or about the 13th day of August, 1902, purchase from one William C. Lane, of New York, all the manufacturing plants, properties, products, and businesses which said Lane had theretofore purchased from the Milwaukee Harvester Company (respondent herein), the McCormick Harvesting Machine Company, the Plano Manufacturing Company, and the Warder, Bushnell and Glessner Company, respectively, but not the capital stock of any of said companies, and that neither respondent herein nor the International Harvester Company of New Jersey has ever had any ownership of or interest in the capital stock of said companies, or of any of them, nor is the respondent nor the International Harvester Company of New Jersey in any way now interested in the capital stock of said companies or in any of them, except as respondent and said International Harvester Company of New Jersey are connected together in the manner herein set out.

That said corporations have existed since the purchase by the International Harvester Company of New Jersey, of their physical properties as hereinbefore set out, as corporate entities, solely for the purpose of closing their business and of settling the accounts receivable and other matters of business between themselves and their customers, in which business neither the respondent nor the International Harvester Company of New Jersey has any interest whatsoever, and that none of said corporations now own or hold any of the stock of respondent or of the International Harvester Company of New Jersey, or have any connection with or control over either of said companies.

That afterwards, in December, 1904, said International Harvester Company of New Jersey, having first acquired control of the capital stock of the D. M. Osborne Company for the purpose of securing by purchase its physical properties, did purchase from said company all its products, materials, personal property, and business, including its patent rights, and shortly thereafter, in January, 1905, its manufacturing plants and real property; and that on or about November, 1905, said International Harvester Company of New Jersey did purchase from the Aultman and Miller Buckeye Company, aforesaid, all its manufacturing plant, the property, products, and business which had formerly been the manufacturing plant, property, and business of Aultman, Miller and Company, but it did not purchase any of the capital stock of said Aultman and Miller Buckeye Company.

That none of the said purchases by the International Harvester Company of New Jersey, or the transactions above referred to in connection therewith, was made or occurred within said State of Missouri.

That said purchase by said International Harvester Company of the manufacturing plants, properties, products, and business of respondent was paid for in cash, and that no one who was either an officer, director, or stockholder of respondent prior to the 13th day of August, 1902, when said manufacturing plants and properties and business were acquired by said International Harvester Company of New Jersey, has ever become or is now an officer, director, or stockholder of said International Harvester Company of New Jersey.

Respondent further states that said International Harvester Company of New Jersey, likewise purchased for cash, or its equivalent in negotiable notes, said manufacturing plants, properties, products, business, and rights of said D. M. Osborne and Company, and of said Aultman and Miller Buckeye Company, respectively, and that no stock of said International Harvester Company was issued, paid, or delivered for or on account of the acquisition by said International Harvester Company of New Jersey, of the property formerly belonging to respondent, or to D. M. Osborne and Company, or to Aultman, Miller and Company.

That nearly $20,000,000.00 in cash was invested in said International Harvester Company of New Jersey by persons who have never been in any way connected with any companies theretofore engaged in said business nor connected in any way with said business of manufacturing or selling agricultural implements, tools, or machinery, and that such money was invested by them in said International Harvester Company of New Jersey, in the belief and with the purpose that the organization of such a corporation, which would acquire and operate large manufacturing plants for the production of great quantities, and for the sale in the United States and in foreign countries of agricultural implements, tools and machinery would not be only lawful and furnish a proper investment of funds, but also by its greater economies in production and distribution, would largely benefit the consumers of such articles as well as the dealers therein.

That the manufacturing plants, properties, products, businesses, and patent rights formerly owned by said McCormick Harvester Company, the Plano Manufacturing Company, and the Warder, Bushnell and Glessner Company were for the most part paid for by said International Harvester Company of New Jersey in and with the capital stock of said company; that although each of said companies had a large number of stockholders, only three of the men who had prior to August, 1902, been connected with said McCormick Harvesting Machine Company, and only one who had prior to said date been connected with said Plano Manufacturing Company, and only one who had prior to August 12th, 1902, been connected with said Warder, Bushnell and Glessner Company, subsequently became connected and identified with said International Harvester Company of New Jersey, as its officers or directors, and that no person who was formerly a stockholder, an officer, or a director of respondent, or of said D. M. Osborne and Company, or of said Aultman, Miller and Company, or of said Aultman and Miller Buckeye Company, is now, or has at any time been an officer or director of said International Harvester Company of New Jersey.

That not one of said companies whose properties and businesses were acquired by said International Harvester Company of New Jersey, as aforesaid, is now engaged in the manufacture or (except respondent), in the sale of agricultural implements, tools, or machines, or has any connection with, or is under the control of, either the respondent or said International Harvester Company of New Jersey.

That when said International Harvester Company of New Jersey was formed, with a capital stock of $120,000,000.00, as aforesaid, its main purpose was the manufacture of agricultural implements, tools, and machinery, and its large capitalization was necessary to furnish adequate facilities and resources for that purpose; but it was found not to be feasible for it to be also the distributor and jobber of its own manufactured products for the reason, among others, that certain States wholly excluded from doing business therein corporations having so large a capital stock, and other States imposed a license fee for the privilege of doing business therein, based upon the total amount of the capital stock of the corporation and not upon the amount of capital invested within the State, so that the sum thus required to pay said license fees was often grossly out of proportion to the amount of capital invested and business transacted within such State and was sometimes as great as the entire profit of the business which such corporation might reasonably expect to earn within such State; that it was therefore determined by the directors and stockholders of the International Harvester Company of New Jersey that said company would not engage i the business of distributing and jobbing its manufactured products, but would sell them to another corporation which would purchase said products and distribute the same to the consumers.

That this plan was first determined upon some weeks after the International Harvester Company of New Jersey, had acquired respondent's assets and property as aforesaid, but had not acquired its capital stock; and thereupon the stockholders and directors of said International Harvester Company of New Jersey decided to organize a corporation having the power to conduct the business of selling agricultural implements, tools, and machinery; and thereupon it was suggested to the stockholders and directors of said International Harvester Company of New Jersey, that respondent was then in existence as a corporate entity under the name of the Milwaukee Harvester Company, but without business or assets, and that it was already licensed and authorized to conduct the business of selling agricultural implements, tools, and machinery in certain States, including the State of Missouri, and that its corporate organization and charter could economically be employed in carrying out the aforesaid purpose; and thereupon, for the first time, it was decided, instead of organizing a new corporation for that purpose, to acquire the capital stock of respondent and bring about an arrangement between said International Harvester Company of New Jersey and respondent, whereby the former would manufacture and sell, and the latter would buy and distribute through local agents in the various States of the United States, including the State of Missouri, such agricultural implements, tools, and machinery as should be agreed upon between them from time to time; that thereupon the capital stock of respondent, which at that time was substantially valueless because all its property of every kind and nature had theretofore been sold to the International Harvester Company of New Jersey, as aforesaid, and the proceeds thereof had been distributed to respondent's stockholders, was acquired in the interest of the stockholders of said International Harvester Company of New Jersey, and the said stock, that is to say, 9,991 shares out of the total of 10,000 shares thereof were placed in the names of and have since been held by Charles Deering, Cyrus H. McCormick and George W. Perkins, jointly, as trustees for the stockholders of the International Harvester Company of New Jersey, as a class, and that the greater number of the persons who are now officers of respondent, were, prior to the said acquisition of respondent's capital stock, officers of said International Harvester Company of New Jersey, and that all the persons who are now directors of respondent were at said time and now are directors of said International Harvester Company of New Jersey; that is to say, the present officers and directors of respondent were taken from the officers and directors of the International Harvester Company of New Jersey, but the officers and directors of the said International Harvester Company of New Jersey were never composed, either in whole or in part, of those who had been connected with respondent before respondent sold its physical properties, as aforesaid, and the present directors of respondent constitute only one-half of the total number of directors of the International Harvester Company of New Jersey, respondent having nine directors and said International Harvester Company of New Jersey having eighteen directors; that the acquisition of the stock of respondent, as aforesaid, was not a part of the plan of the incorporation of said International Harvester Company of New Jersey, nor was it contemplated nor intended at the time of the incorporation of the International Harvester Company of New Jersey, nor at the time of its purchase of the property, assets, and business of respondent, nor until several weeks thereafter; and that since the month of September, 1902, in pursuance of an arrangement with said International Harvester Company of New Jersey to buy and distribute its products, respondent has been engaged in the business of selling (but not of manufacturing) agricultural implements, tools, and machinery in the State of Missouri and elsewhere; that respondent has not been confined exclusively to the agricultural implements, tools, or machinery manufactured by said International Harvester Company of New Jersey, but has been free to purchase when and where and as it liked, and has, in fact, purchased and sold agricultural implements, tools, and machinery from other manufacturers than of said International Harvester Company of New Jersey; though because of the community of interest, through their respective stockholders, nearly all of the business of respondent has been, and is, selling and dealing in the agricultural implements, tools, and machinery manufactured by said International Harvester Company of New Jersey; that while the relation of the stockholders of the International Harvester Company of New Jersey and of respondent is as above set forth, the two corporations are separate and distinct; that respondent is engaged exclusively in the business of selling and distributing agricultural implements, tools, and machinery, while the main and almost exclusive business of said International Harvester Company of New Jersey is the manufacture of such articles and the sale thereof as a manufacturer, and not as a jobber and distributor.

That respondent was not, neither were its officers or stockholders, a party to or connected with the organization of said International Harvester Company of New Jersey, or with any of the purchases aforesaid made by said International Harvester Company

of New Jersey; neither did respondent, or its officers or stockholders of any of them, at any time have any part of interest in the forming or carrying out of the said plan of purchasing the plants, properties, and business of the other companies as herein set out. Respondent sold its property and assets as herein set out, and several weeks after said sale first began to purchase and distribute to the consumers thereof the products of the said International Harvester Company of New Jersey.

That it was not the design or the purpose of the formation of the International Harvester Company of New Jersey or of any of the said purchases made by it, nor has the result been to create a monopoly or to restrain trade in the manufacture, purchase, or sale of agricultural implements, tools, and machines sold or offered for sale in Missouri, or to regulate, control, fix, or maintain the prices of agricultural implements, tools, or machinery, or to limit or fix the amount or quantity of agricultural implements, tools, and machinery manufactured or sold or offered for sale in the State of Missouri, or to increase the market price of said articles.

That the real and only purpose of said purchases of the plants and properties by the International Harvester Company of New Jersey was to enable said company to avoid the large waste that had heretofore resulted from the unbusinesslike and extravagant methods which prevailed in the sale of farm implements, tools, and machines, and particularly in the harvester trade, and which required many unnecessary canvassers, experts, and selling agents, and entailed other large and useless expenditures, and that the result of the business methods of the International Harvester Company of New Jersey and of respondent has been to substantially maintain the low level of prices existing at the time of the incorporation of the said International Harvester Company of New Jersey, to the great advantage and profit of the consumer, so that although the cost of all the materials and labor entering into the manufacture of said agricultural implements, tools, and machinery was then and constantly has been increasing, yet such consumer, by the economies produced and the better operation of the facilities marketing the products, have paid for five years, since the organization of the International Harvester Company of New Jersey, no greater prices for their farm implements, in spite of the increase in the cost of producing and manufacturing the same.

That the companies whose plants and manufactured products and businesses were purchased did not, after such purchase, continue to sell in the State of Missouri agricultural implements, tools, or machinery as they had previously done, and for that reason the number of competitors was to that extent at that time lessened, but that the market price of said harvesting machines and implements has not been increased for the five years following the incorporation of the International Harvester Company of New Jersey, and that full and free competition in the manufacture, purchase, and sale of agricultural implements, tools, and machinery in the State of Missouri existed at the time of the incorporation of the International Harvester Company of New Jersey and has continued since that time, and that there are now in direct competition with respondent in the sale of agricultural implements, tools, and machinery in the State of Missouri the following numbers of competitors in the following lines of agricultural implements, tools, and machinery, respectively, and that substantially such competition was in existence at the time of the said incorporation of the International Harvester Company of New Jersey.

Number of manufacturers competing with respondent.

Principal line.	Number of other manufacturers.
1. Binders	6
2. Clover bunchers	4
3. Corn harvesters and binders	14
4. Cultivators	74
5. Cream separators	22
6. Corn pickers and huskers	4
7. Corn planters	44
8. Corn shellers	34
9. Drills	42
10. Feed grinders	64
11. Gasoline engines	139
12. Harrows—disk, 64; spring tooth, 39; peg tooth, 74	177
13. Hay loaders	12
14. Hay presses	43
15. Hay stackers	25
16. Headers and combined harvesters	5
17. Horse powers	55

Principal line.	Number of other manufacturers.
18. Huskers and shredders	17
19. Knife and tool grinders	18
20. Manure spreaders	21
21. Mowers	18
22. Rakes	40
23. Reapers	6
24. Sweep rakes	18
25. Seeders	33
26. Tedders	14
27. Twine	25
28. Wagons	107
Total other manufacturers	1,071

Respondent further states that since 1902 the cost of the materials and of the labor composing the actual cost of agricultural implements, tools, and machinery has steadily and largely increased and that the total increase in such actual cost of the agricultural implements, tools, and machinery sold by respondent in the State of Missouri between the years 1902 and 1907 is more than thirty per cent on the average, and the actual increase in the more important materials used in such manufacture are correctly stated in the following tabulation, to wit:

Comparison of prices of principal materials and of labor used in making harvesting machines.

Materials.	1901–2 contract prices.	1907 contract prices.	Increase.
Pig iron:			*Per cent.*
No. 2 foundry iron	$13.50 ton	$20.75 ton	53.7
Malleable Bessemer	$14.50 ton	$21.40 ton	47.6
Steel	$1.35 cwt.	$1.665 cwt.	23.3
Lumber:			
Yellow pine pole			
Stock	$26.00 per M.	$37.50 per M.	44.2
Hardwoods	$25.50 per M.	$37.50 per M.	47.0
Crating	$9.00 per M.	$15.00 per M.	66.6
Cotton duck	$0.27 yard	$0.365 yard	35.1

NOTE.—Current market prices show an increase of from 10 to 15 per cent over the contract prices used above.

Wages.	1902	1907	Increase.
			Per cent.
Average wage per hour, combining time and piece work	19.4 cents	22.8 cents	17.5

But that in spite of such steady and large increase in the actual cost of materials and labor, the prices of the harvesting implements, tools, and machinery sold by respondent through its local agents to the farmers in the State of Missouri, did not increase between the years 1902 and 1907; and in the latter part of the year 1907, and solely because of the continually increasing cost of materials and labor as aforesaid, an advance of approximately 5 per cent in the prices of the manufactured products sold by this respondent for the season of 1908, has taken place, but that such advance in prices has not been as great as the increase in the average prices of other implements, tools, and machinery and manufactured products sold in the State of Missouri during the same period; that during the said period from 1902 to 1907 the prices of very many of the agricultural implements, tools, and machinery of lines not sold and handled by respondent have largely increased in the State of Missouri, and the market prices of all farm products which are raised and harvested with such agricultural implements, tools, and machinery in the State have largely increased during the same period, and in far greater proportion than the increase in the year 1907 in goods sold by respondent as aforesaid.

VIII.

That the allegations of this Paragraph VIII, except so far as they relate directly to respondent herein, are not within the personal knowledge of respondent, but respondent is informed and believes, and for the purposes of this proceeding states upon information and belief, that said International Harvester Company of New Jersey was not organized under the laws of the State of New Jersey for the purpose of effecting a combination or pool, or trust, or agreement, or understanding and arrangement of the said corporations heretofore referred to and other corporations engaged in the same business in other States for the purpose of restraining trade and competition in the manufacture, purchase, and sale of agricultural implements, tools, and machinery in said State of Missouri, or for the purpose of regulating, controlling, fixing, and maintaining the price of agricultural implements, tools, and machinery sold and offered for sale in said State, or for the purpose of limiting and fixing the amount and quantity of agricultural implements, tools, and machinery sold and offered for sale in said State; and respondent denies that any pool, trust, combination, or understanding was entered into by said corporations hereinabove referred to, or that said corporations became members of or participated in any pool, trust, combination, or understanding which was designed and made with a view to increase or which tended to increase the market price of agricultural implements, tools, and machinery sold and offered for sale in said State, or which was designed or made with a view to lessen or which tended to lessen free competition in said State in the manufacture, purchase, and sale of agricultural implements, tools, and machinery, or in any pool, trust, combination, or understanding whatsoever.

That shortly after the organization of said International Harvester Company of New Jersey, it did purchase and acquire and come into the control of the property, plants, facilities, and business formerly those of said several corporations hereinabove referred to at the times and in the manner hereinabove stated, but that such acquisition did not embrace the capital stock of said corporations, except as herein stated, nor were such purchases and acquisitions made in furtherance of any of the unlawful purposes alleged in the information herein, but only for the lawful purposes herein stated; neither did said International Harvester Company of New Jersey pretend to make such purchases or acquisitions, but it in fact made them as hereinabove alleged; that such sale and transfer of the assets, property, and business formerly those of said several corporations hereinabove referred to was accomplished in the manner hereinabove specifically stated and not otherwise, and that said several corporations did not on or about the 18th day of September, 1902, or on any other date, enter into or become members of any pool, trust, combination, or agreement for the unlawful purposes set forth in the information herein, or for any other purposes; that said International Harvester Company of New Jersey, being then the owner thereof, did on or about the 18th day of September, 1902, sell and transfer to respondent, certain property in the State of Missouri, but that such sale and transfer was not a part of any plan for any pool, trust, combination, or agreement, but was made in pursuance of and to carry out the arrangement hereinbefore described whereby respondent purchased the manufactured product of said International Harvester Company of New Jersey for the purpose of selling and distributing the same to the users thereof; that the following of said corporations cancelled and surrendered their licenses to do business in the State of Missouri and on the dates following, to wit: McCormick Harvesting Machine Company, October 1st, 1903; Plano Manufacturing Company, October 9, 1903; D. M. Osborne and Company, July 2, 1906; Aultman, Miller and Company, August 31, 1904; and that the Warder, Bushnell and Glessner Company has also ceased to do business in Missouri, that said International Harvester Company of New Jersey, by its actual purchase in the manner hereinabove set out, acquired the right to manufacture and sell all the agricultural implements, tools, and machinery, under the various patents and devices, theretofore manufactured and sold by said several corporations which were authorized to and did engage in the business in said State of Missouri; but said property and rights were not acquired by virtue of the formation of any pool, trust, combination, or agreement between said corporations hereinabove referred to, but solely by virtue of said purchase of said several properties, as aforesaid.

IX.

That the allegations of this paragraph IX, except so far as they relate directly to respondent herein, are not within the personal knowledge of respondent, but that respondent is informed and believes, and for the purpose of this proceeding admits and states on information and belief, that respondent has not heretofore acted as the sole agent of said International Harvester Company in said State, in the sale of the

agricultural implements, tools, and machinery manufactured by it, but respondent has since September, 1902, purchased, sold, and distributed in the State of Missouri the manufactured products of said International Harvester Company of New Jersey, and has been, during said time, the only seller and distributor thereof in said State; that most of the agricultural implements, tools, and machinery sold by respondent are purchased from and manufactured by said International Harvester Company of New Jersey; that none of such articles are manufactured by respondent, and respondent's action in that regard is not the result of any pool, trust, combination, or agreement as in the information herein charged and alleged.

X.

Respondent further states that all harvesting machines and nearly all the other agricultural implements, tools, and machinery sold by it in the State of Missouri are sold through respondent's local agents at various points through said State, who sell such agricultural machines to the farmers upon commission, and the property therein, and the proceeds of the sales thereof by such local agents, belong to respondent until such local agents has made settlement therefor, and that in order to secure the undivided services and energy of such local agents, for more than twenty-five years prior to 1906, it was customary and substantially universal among all the sellers of harvesting machines, mowers, and other kinds of agricultural implements, and among manufacturers of sewing machines, organs, and other products which are thus sold by local agents on commission, to provide in their commission contracts with such agents that the agent should not sell or be interested in the sale of any of the products of any competitor of the company of which he was acting as agent, and that such exclusive agency clause is at this time still used by many of respondent's competitors and by many other manufacturers; that prior to the year 1906, respondent has used, in all its commission contracts made with its various agents in the State of Missouri, such exclusive agreement, in substantially the following form:

"Said agent especially agrees not to accept the agency for, or to be interested in the sale of any grain binder, header, corn binder, husker and shredder, reaper, mower, stacker, sweep rake, hay rake, or hay tedder, other than those manufactured by the International Harvester Company, either directly or indirectly, not to permit any one acting for him as employe, agent, or partner, so to do while acting as agent for the said company under this contract, and said agent agrees to pay said company on demand as liquidated damages, twenty-five dollars for each grain binder, header or corn binder; fifty dollars for each husker and shredder; ten dollars for each mower, reaper, or stacker; five dollars for each sweep rake, hay rake, or hay tedder sold in violation of this paragraph of this contract."

A copy of such commission contract used by respondent in the State of Missouri, during the season of 1905, and containing said provision, being hereto attached, marked Exhibit "B," and made a part hereof; that since 1905 said exclusive agency clause has not been inserted in its commission contracts nor enforced by respondent with respect to the conduct of business by its various agents in the State of Missouri, but said clause, and the practice represented by said clause, have been wholly discontinued by respondent, as will appear from the contract with agents in the State of Missouri, used by respondent during the year 1906 and thereafter, a copy of which contract is hereto attached and marked Exhibit "C," and made a part hereof, and that since 1905 respondent has made no contract with any retail dealer, or other person, in the State of Missouri, limiting or restricting such agent, dealer, or person, in handling or selling of agricultural implements, tools, or machinery, solely to those handled and sold by respondent, but that since 1905 all such agents and dealers or other persons connected with or acting for or under respondent, have been left free to sell or deal in any agricultural implements, tools, or machinery, wherever or by whosoever made, and at the same time to represent and handle the goods of respondent, and that at no time did respondent use said exclusive agency clause, as set out in said Exhibit "B," to create a monopoly of the business of manufacturing and selling agricultural implements, tools, and machinery in said State, or to prevent competition in the sale thereof, but the sole purpose of such exclusive agency clause as used by respondent, and by all other dealers in agricultural implements sold on commission, was the reasonable and lawful intention of securing and retaining the undivided interest and loyalty and energy of such agent in the transaction of the principal's business, and that said exclusive clause was never used by respondent in the State of Missouri in conducting its business with and through the local dealers, its agents, for any other or different purpose, and that respondent has not at any time controlled, and does not now control, more than thirty per cent of the business of selling agricultural implements, tools, and machinery in the State of Missouri, and does not and has not at any time secured or

controlled or enjoyed any portion of the business of manufacturing such implements, tools, and machinery in said State, and that respondent by its conduct of said business of selling said articles in the State of Missouri, since 1902, has been of substantial benefit to the people of said State, and particularly to the local dealers in the said articles and to the farmers using the same, in the improved quality and durability of said agricultural implements, tools, and machinery sold by respondent, and the improved facilities offered in the handling and sale of the same and in the stability of the price thereof, notwithstanding the great increase in the cost of production.

XI.

Respondent, further answering and by way of return to said information, states that during all the time within which it has been licensed to do business in the State of Missouri it has used its rights, franchises, and privileges and authority granted by said license only in the manner and form and under the conditions hereinabove set out.

Wherefore respondent prays judgment that it is not guilty of any illegal, willful, or malicious perversion of abuse of the privileges, franchises, licenses, or authority granted to it by the State of Missouri, and that it is not illegally or unlawfully usurping any privileges, franchises, or authorities which are not granted to it by the State of Missouri under the contract, license, and authority aforesaid, and that the plaintiff can not lawfully impair the same, and that respondent be dismissed and discharged of and from the charges laid against it by the information in quo warranto herein and confirmed in the privileges, franchises, license, and authority heretofore granted to it, and that it depart without day in this behalf.

SELDEN P. SPENCER,
W. M. WILLIAMS,
Attorneys for Respondent.

EXHIBIT A.

STATE OF MISSOURI.

No. 237.

CERTIFICATE.

Whereas the Milwaukee Harvester Company, incorporated under the laws of the State of Wisconsin, has filed in the office of the secretary of state duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing foreign private corporations:

Now, therefore, I, Alexander A. Lesueur, secretary of state of the State of Missouri, in virtue and by authority of law, do hereby certify that said Milwaukee Harvester Company is from the date hereof duly authorized to do business in the State of Missouri for a term ending December 12, 1931, and is entitled to all the rights and privileges granted to foreign corporations under the laws of this State, and that the amount of the capital stock of said corporation is seven hundred and fifty thousand dollars, and the amount of said capital stock represented in the State of Missouri is seventy-six thousand three hundred and eighty-seven and 50-100 dollars.

In testimony whereof I hereunto set my hand and affix the great seal of the State of Missouri. Done at the city of Jefferson this fifth day of April, A. D. eighteen hundred and ninety-two.

[SEAL.] A. A. LESUEUR, *Secretary of State.*

EXHIBIT B.

COMMISSION AGENCY CONTRACT.

International Harvester Company of America, a corporation having offices in Chicago, Illinois, hereinafter designated "company," and ——— ——— of ——— in the county of ——— and State of ———, hereinafter designated "agent," agree and contract this —— day of ———, A. D. 190—, as follows:

Said company hereby appoints said ——— ——— its sales agent under the limitations and restrictions herein specified for the sale of its ——— line of grain, corn, and grass harvesting machinery, more particularly enumerated in schedule referred to in article 10th of this contract, together with repairs for same, in the following-described territory, to wit: ——— ——— and no other, during the season ending December 31st, 1905.

Said agent accepts such agency, and in consideration thereof, and for the commission herein agreed to be paid, expressly agrees as follows:

1st. To receive all goods shipped under this agreement, to pay freight on the same from Chicago; keep the same well housed and in good condition, and to make good any damage resulting from the improper handling or storage of same until sold or reshipped; to keep the same free from all charge and expense to said company, including all taxes which may be assessed on such goods carried over in said agent's possession from the preceding year. To collect from the purchaser the freight on all goods sold or assume the loss of same, and in no case to charge said company with any sum or sums for freight, handling, storage, or other expenses, except provided that in case said company shall remove or transfer any goods received under this contract, said agent shall be entitled to the actual freight paid when the goods were received; said agent shall send promptly at the time of shipment to International Harvester Company of America, at ——— ———, a duplicate shipping receipt for each shipment made.

2nd. To diligently and thoroughly canvass said territory, and in all reasonable and proper ways promote the trade and interests of said company, and do all business pertaining to the sale of said machines, attachments, and repairs; and to be governed by the printed instructions on the back of this contract, which are hereby made a part of the conditions hereof.

3rd. To deliver, set up, and fairly start every machine sold, and to instruct the purchaser how to adjust it to work in different kinds and conditions of crops. To pay all livery expenses that may be incurred by experts or canvassers furnished by said company while assisting said agent.

4th. To sell to good and responsible parties only, and to draw all notes, taken on sales, payable to the order of International Harvester Company of America, upon blanks furnished by said company for that purpose; said notes to bear interest at the rate prescribed in said schedule of prices and terms. Notes taken by said agent on any other terms than those prescribed by said company shall, at the company's option, be applied in payment of said agent's commission.

5th. To sell all machines or property received under this contract at such prices and on such terms as may be fixed in writing by said company or its general agent in the territory herein mentioned.

6th. To settle with the purchaser for each machine or other article sold hereunder, either by cash or note, at the time of delivery, and in case said agent shall deliver any machine or other property mentioned herein for use in the field, or permit the use of any thereof before it is fully settled for by cash or good and collectible note, said agent shall account for and pay to said company on demand the full price of the same, together with interest thereon from October 1st, 1905, and also all costs and expenses incurred on account of same, and without any claim for commissions from, or under any warranty by said company.

7th. To take a signed order from each purchaser, on blanks furnished by said company, and to use or give no warranty on any such machines other than the regular warranty which is incorporated in machine-order blanks for goods furnished by said company.

8th. To order all attachments and repairs for these machines from said company, or its said general agent, and provide suitable storage therefor; and to sell the same for cash only, and to remit the proceeds to said company or its said general agent. Inasmuch as the reputation of the company's machines is injured by the use of ill-fitting parts made of poor material, by persons not interested in the manufacture of machines, said agent agrees to handle none of such repair parts, but agrees to obtain all repair parts for use on the company's machines from said company.

9th. To furnish said company, or its said general agent, whenever called upon, a full and detailed account of all sales made under this contract, on such blank forms as shall be furnished by said company, or its said general agent for that purpose, and to makea full and complete settlement whenever called upon by said company, or its said general agent.

10th. Said company agrees to pay said agent, as commission on machines and attachments sold, an amount equal to the excess in the total proceeds received from sales of said machines and attachments (as shall be shown by account sales), over and above what said machines and attachments amount to at the net prices named to agent in separate schedule of net prices and terms, issued or to be issued by said company for the season of 1905 under this contract.

11th. All sales of machines on which said company receives all cash on or before the dates mentioned in said schedule of prices and terms will be accepted as cash sales, and all machines that are not settled for in full with cash on or before said dates will be settled for at time prices.

12th. No commissions will be paid on attachments sold or furnished gratis with machines.

13th. Commissions shall only be paid on machines sold and settled for, and none shall be paid on machines returned condemned, or on orders not filled; and in case sales are made to parties who are discovered or adjudged by said company, or its said general agent, to have been doubful or worthless at the time of sale, the notes taken for such sales shall be received by said agent to apply on payment of commissions due upon sales recognized and approved by said company; and if the machine account at time of settlement is overpaid by notes, such surplus notes shall be received by said agent as payment in full or in part of commissions due.

14th. Notes given in accordance with the terms of this contract by purchasers of machines, which are found to be good and collectible, shall be accepted at the time of settlement. Notes not in accordance with the terms of this contract shall be replaced by said agent, upon demand, with cash or other notes acceptable to said company.

15th. Said company reserves the right to hold as collateral security for the payment of said agent's indebtedness to said company any purchasers' notes received by said agent on account of sales of said company's property offered by said agent in settlement but not finally accepted by said company.

16th. Said agent shall receive as commission on sales of repairs twenty-five per cent of the list price thereof, as fixed by said company's price list of repairs for these machines for the current year, and said agent agrees to pay freight or express on same from general agency or transfer point.

17th. It is further expressly agreed that said agent is to receive in the capacity of agent of said company, and not otherwise, all goods shipped under this contract, and all moneys, property, or other securities taken in payment for machines, attachments, and repairs, or other property sold by said agent for said company.

18th. Said agent further agrees under this contract not to retain, on account of commission or any other claim against said company, any moneys, notes, or other property received from the sales of any articles hereunder or from collection on notes or accounts, but to promptly remit all moneys, notes, or other property to said company, or its said general agent, leaving commissions and all other claims to be adjusted at settlement.

19th. Said agent is strictly forbidden to take any part from any machine for the purpose of supplying customers with repairs.

20th. It is mutually agreed that said company shall at all times have exclusive and entire control over all machines and attachments and all orders, contracts, accounts, notes, moneys, or other property accruing and growing out out of the sale of said machines, attachments, stackers, sweep rakes, hay rakes, hay tedders, twine, repairs, or other property, whether for this or previous years, and may at any time, when it considers its interests are neglected or jeopardized, without notice, annul and terminate this and all prior contracts and take possession of all orders, notes, accounts, moneys, machines, attachments, stackers, sweep rakes, hay rakes, hay tedders, twine, and any other property in the possession or under the control of said agent by virtue thereof; and said agent hereby waives all right of action for damages because of such cancellation of contract and termination of agency.

21st. Said company agrees to use its best effort to complete and ship all machines ordered and to supply all attachments and repairs ordered under this contract so long as its stock shall last, but shall not be held responsible to said agent for any damage in case the demand for either of said machines, attachments, or repairs shall exceed the supply, whether growing out of interruptions by fire or other elements, riot, labor disturbances, delay in transportation, or any other cause whatsoever.

22nd. Said agent especially agrees not to accept the agency for or to be interested in the sale of any grain binder, header, corn binder, husker and shredder, reaper, mower, stacker, sweep rake, hay rake or hay tedder, other than those manufactured by the International Harvester Company, either directly or indirectly, nor to permit anyone acting for him as employee, agent, or partner, so to do while acting as agent for the said company under this contract, and said agent agrees to pay said company, on demand as liquidated damages, twenty-five dollars for each grain binder, header, or corn binder; fifty dollars for each husker and shredder; ten dollars for each mower, reaper, or stacker; five dollars for each sweep rake, hay rake, or hay tedder sold in violation of this paragraph of this contract.

23d. Said agent hereby represents that he is solvent and responsible, and this contract is entered into by said company upon the faith of such representation.

24th. It is further agreed that this contract shall in no case be valid and binding upon said company of the first part until the same shall have been approved by the general agent, and also that it can not be subsequently changed in any of its provisions

in any manner, either verbally or otherwise, by any person without the written approval of the said general agent.

INTERNATIONAL HARVESTER CO. OF AMERICA. [SEAL.]

Approved at....., 190..

INTERNATIONAL HARVESTER COMPANY OF AMERICA,
By ——— ———, *General Agent.*
By ——— ———, *Traveling Agent.*
——— ———. [SEAL.]
——— ———. [SEAL.]

SECURITY BOND.

In consideration of the appointment and retention of the within-named agent of International Harvester Company of America, for the sale of its harvesters, binders, reapers, mowers, huskers and shredders, stackers, sweep rakes, hay rakes, hay tedders, twine, attachments, repairs, and other property in certain territory, the undersigned jointly and severally guarantee the fulfillment by said agent of all the obligations and duties growing out of and relating to such agency or otherwise that now or hereafter may exist, and we agree to pay said company, or its successors, all damages it or they may sustain by reason of any default of such agent; and we hereby waive notice of acceptance of the within commission contract, notice of default of the within named agent, demand and diligence, and hereby agree that the written acknowledgment of or a judgment of any court against said agent shall in every respect bind and be conclusive against the undersigned, their heirs or representatives; and that the liability hereby created shall not be waived, modified, or canceled by any extension of time to pay or keep any part of said obligations or duties, or otherwise, nor except by an instrument in writing, executed by said company or its general agent, canceling its liability hereunder and delivered to the undersigned. No agent has authority to vary the terms of this contract of guaranty.

Witness our hands and seals ——— ———, A. D. 190—.

P. O. ——— ——— ——— ——— [SEAL.]
P. O. ——— ——— ——— ——— [SEAL.]
P. O. ——— ——— ——— ——— [SEAL.]
——— ——— *Machine.*

Form C 257.

———, 190—.

Date of contract. 1905.

COMMISSION AGENCY CONTRACT.

INTERNATIONAL HARVESTER COMPANY OF AMERICA (INCORPORATED).

With ——— ———, Agt. P. O. ——— ———. Business point ——— ———
County of ——— ———. State of ——— ———. Shipping point ——— ———.
Railway Co. ——— ———. Express point ..... ———. Express Co. ———
———.

Estimated sales for 1905.

——— grain bdrs. ——— corn bdrs. ——— mowers. ——— shredders.

(Signed) ——— ———, *Traveling Agent.*

INSTRUCTIONS.

The following instructions to agents are made a part of the within contract:

1st. We furnish you a reasonable amount of printed matter free of charge, delivered at the express office at Chicago, you to pay express charges on the same. We will not pay for newspaper or other advertisements unauthorized by us; neither will we pay for any printing of any kind whatever, except that furnished by us from our office.

2d. We will not pay any charges for telegraphing, except for answers to messages sent by us, unless it be in reference to parts short on machines shipped by us, or a similar case in which we are entirely at fault; and in such cases dispatches may be sent to us C. O. D.

3d. Our canvassers are sent to assist you and are not invested with authority to change prices or terms; consequently at time of settlement, we shall consider their

acts, so far as all matters affecting your contract with us, as having been done by your direction and approval.

4th. You must give every purchaser one of our printed warranties with each machine you sell.

5th. Should any part of machines shipped you prove defective from flaws, poor material, or bad workmanship, said defective parts may be charged back to us; but in all such cases the broken or defective parts must be exhibited at settlement to the authorized agent of said company, who shall return them to the general agent. A complete list of all parts given free must be kept on blanks furnished by us for that purpose; this list at settlement to be subject to the approval of the general agent herein of this company, and only such parts will be allowed as are approved.

6th. We do not agree to furnish repairs gratis after the first season, and then only such parts as are needed to replace those that have proved to be defective.

7th. Knives, sickles, sections, canvases, reel-boards, reel-arms, neck-yokes, single-trees and tongues are not warranted, as they are always liable to be broken or damaged by improper usage, and must never be given free.

8th. You must sell all extras at current list prices, and for cash only, and in no case to charge the purchaser more than the list price unless the part or parts are ordered by express especially for him.

9th. You must sell only to retail trade, and must not, directly or indirectly, sell or offer for sale any machines to parties outside of the within-named territory, under penalty of forfeiture of all commissions to the agent in whose territory the purchaser resides; but in no case is the said International Harvester Company of America to be liable for any trespass by one agent upon the rights of another except as said company, at its option, may first collect the same from said other agent.

10th. You must not exhibit or furnish any machines received under this contract for exhibition at any fair without the written consent of said company or its aforesaid general agent.

11th. All men in the employ of this company are furnished money sufficient to defray their expenses, and we will not be responsible for any money you may advance to them.

INTERNATIONAL HARVESTER COMPANY OF AMERICA.

EXHIBIT C.

Form No. C 398. 12M–7–12–05.

——— ——— machine.

COMMISSION AGENCY CONTRACT.

International Harvester Company of America, corporation having offices in Chicago, Illinois, hereinafter designated "Company," and ——— ———, of ———, in the county of ——— and State of ———, hereinafter designated "agent," agree and contract this ——— day of ———, A. D. 190—, as follows:

Said company hereby appoints said ——— it sales agent under the limitations and restrictions herein specified for the sale of its ——— line of grain, corn, and grass harvesting machinery, more particularly enumerated in schedule referred to in article 7th of this contract, together with repairs for same, in the following described territory, to wit: ——— ———, during the season ending December 31st, 1906.

Said agent accepts such agency and in consideration thereof and for the commission herein agreed to be paid, expressly agrees as follows:

1st. To receive all goods shipped under this agreement, to pay freight on the same from Chicago; keep the same well housed and in good condition, and to make good any damage resulting from the improper handling or storage of same until sold or reshipped; to keep the same free from all charge and expense to said company, including all taxes which may be assessed on such goods carried over in said agent's possession from the preceding year. To collect from the purchaser the freight on all goods sold or assume the loss of same, and in no case to charge said company with any sum or sums for freight, handling, storage, or other expenses, except provided that in case said company shall remove or transfer any goods received under this contract, said agent shall be entitled to the actual freight paid when the goods were received.

2d. To deliver, set up, and fairly start every machine sold, and to instruct the purchaser how to adjust it to work in different kinds and conditions of crops. To pay all livery expenses that may be incurred by experts or canvassers furnished by said company while assisting said agent.

3d. To sell to good and responsible parties only, on such terms as may be prescribed in writing by said company or its general agent, and to draw all notes, taken on sales, payable to the order of International Harvester Company of America, upon blanks

furnished by said company for that purpose; said notes to bear interest at the rate prescribed in schedule of prices and terms referred to in article 7th of this contract. Notes found to be good and collectible, executed by purchasers of machines in accordance with the terms of this contract, shall be accepted at the time of settlement. Notes found at time of settlement to be not in accordance with the terms of this contract shall be replaced by said agent at that time with cash or other notes acceptable to said company.

4th. To settle with the purchaser for each machine or other article sold hereunder, either by cash or note, at the time of delivery, and in case said agent shall deliver any machine or other property mentioned herein for use in the field, or permit the use of any thereof before it is fully settled for by cash or good and collectible note, said agent shall account for and pay to said company on demand the full price of the same, together with interest thereon from October 1st, 1906, and also all costs and expenses incurred on account of same, and without any claim for commissions from, or under any warranty by said company.

5th. To take a signed order from each purchaser, on blanks furnished by said company, and to use or give no warranty on any such machines other than the regular warranty which is incorporated in machine order blanks for goods furnished by said company. To be governed by the printed instructions on the back of this contract which are hereby made a part of the conditions hereof.

6th. To furnish said company, or its said general agent, whenever called upon, a full and detailed account of all sales made under this contract, on such blanks forms as shall be furnished by said company or its said general agent for that purpose, and to make a full and complete settlement whenever called upon by said company or its said general agent.

7th. Said company agrees to pay said agent as commission on machines and attachments sold an amount equal to the excess in the total proceeds received from sales of said machines and attachments (as shall be shown by account sales), over and above what said machines and attachments amount to at the net prices named to agent in separate schedule of net prices and terms, issued or to be issued by said company for the season of 1906, under this contract.

8th. All sales of machines on which said company receives all cash on or before the dates mentioned in said schedule of prices and terms will be accepted as cash sales, and all machines that are not settled for in full with cash on or before said dates will be settled for at time prices.

9th. Commissions shall only be paid on machines sold and settled for, and none shall be paid on machines returned, condemned, or on orders not filled, nor on attachments sold or furnished gratis with machines; and in case sales are made to parties who are discovered or adjudged by said company, or its said general agent, to have been doubtful or worthless at the time of sale, the notes taken for such sales shall be received by said agent to apply on payment of commissions due upon sales recognized and approved by said company; and if the machine account at time of settlement is overpaid by notes, such surplus notes shall be received by said agent as payment in full or in part of commissions due.

10th. Said agent shall receive as commission on sales of repairs twenty-five per cent of the list price thereof, as fixed by said company's price list of repairs for these machines for the current year, and said agent agrees to pay freight or express on same.

11th. It is further expressly agreed that said agent is to receive in the capacity of agent of said company, and not otherwise, all goods shipped under this contract, and all moneys, property, or other securities taken in payment for machines, attachments and repairs, or other property sold by said agent for said company.

12th. Said agent further agrees under this contract not to retain, on account of commission or any other claim against said company, any moneys, notes, or other property received from the sale of any articles hereunder or from collections on notes or accounts, but to promptly remit all moneys, notes, or other property to said company, or its said general agent, leaving commissions and all other claims to be adjusted at settlement.

13th. It is mutually agreed that said company shall at all times have entire control over all machines, orders, contracts, accounts, notes, moneys, or other property accruing and growing out of the sale of said machines, repairs, or other property, and may at any time, when it considers its interests are neglected or jeopardized, without notice, annul and terminate this contract and take possession of all orders, notes, accounts, moneys, and machines in the possession or under the control of said agent by vritue thereof; and said agent hereby waives all right of action for damages because of such cancellation of contract.

14th. Said company agrees to use its best effort to complete and ship all machines ordered and to supply all attachments and repairs ordered under this contract so long as its stock shall last, but shall not be held responsible to said agent for any damage in

case the demand for either of said machines, attachments, or repairs shall exceed the supply, whether growing out of interruptions by fire or other elements, riot, labor disturbances, delay in transportation, or any other cause whatsoever.

15th. It is further agreed that this contract shall in no case be valid and binding upon said company of the first part until the same shall have been approved by the general agent, and also that it can not be subsequently changed in any of its provisions, in any manner, either verbally or otherwise, by any person without the written approval of the said general agent.

INTERNATIONAL HARVESTER COMPANY OF AMERICA. [SEAL.]

Approved at ———, 190— By ——— ———, *Traveling Agent.*

INTERNATIONAL HARVESTER COMPANY OF AMERICA,

——— ——— [SEAL.]
——— ——— [SEAL.]

By ——— ———,
General Agent.

SECURITY BOND.

In consideration of the appointment and retention of the within-named agent of International Harvester Company of America for the sale of its harvesters, binders, reapers, mowers, huskers, and shredders, attachments, repairs, and other property in certain territory the undersigned jointly and severally guarantee the fulfillment by said agent of all the obligations and duties growing out of and relating to such agency or otherwise that now or hereafter may exist, and we agree to pay said company, or its successors, all damages it or they may sustain by reason of any default of such agent; and we hereby waive notice of acceptance of the within commission contract and of this guaranty, notice of default of the within-named agent, demand and diligence, and hereby agree that the written acknowledgment of or a judgment of any court against said agent shall in every respect bind and be conclusive against the undersigned, their heirs or representatives; and that the liability hereby created shall not be waived, modified, or canceled by any extension of time to pay or keep any part of said obligations or duties, or otherwise nor except by an instrument in writing, executed by said company or its general agent, canceling all liability hereunder and delivered to the undersigned. No agent has authority to vary the terms of this contract or guaranty.

Witness our hands and seals ——— ———, A. D. 190—.

P. O. ——— ———. ——— ———. [SEAL.]
P. O. ——— ———. ——— ———. [SEAL.]
P. O. ——— ———. ——— ———. [SEAL.]
——— ———, *Machine.*

Form C 398.

———— ———, 190—.

Date of contract. 1906.

COMMISSION AGENCY CONTRACT.

INTERNATIONAL HARVESTER COMPANY OF AMERICA (INCORPORATED).

With ——— ———, *Agt.* P. O. ——— ———. Business point, ——— ———.
County of ——— ———. State of ——— ———. Shipping point, ——— ———.
Railway co., ——— ———. Express point, ——— ———. Express co., ——— ———.

Estimated sales for 1906.

——— grain bdrs. ——— corn bdrs.
——— mowers. ——— shredders.

(Signed) ——— ———, *Traveling Agent.*

REPLICATION.

Comes now the State of Missouri, by Herbert S. Hadley, attorney general, who in this behalf prosecutes for and in the name of the State and for reply to the answer and return of the respondents herein, denies each and every allegation therein contained, except those which admit the charges and allegations of the information.

And for further reply to the allegations contained in paragraphs 7 and 8 as to the objects and purposes sought to be accomplished, and accomplished, in the organization of the International Harvester Company of New Jersey, and the purchase by it

of the capital stock and assets of the several corporations mentioned in said information, said relator states:

That said International Harvester Company of New Jersey was organized for the purpose of thereby effecting a combination, pool, trust, agreement, understanding, and arrangement of the corporations named in said information, and other corporations engaged in the same business in other States, for the unlawful purposes alleged in said information; and that the said International Harvester Company of New Jersey was not organized for the purpose of becoming the purchaser in good faith of the assets and capital stock of the corporations named in said information; that said International Harvester Company of New Jersey did not, in fact, purchase the property and assets of the several corporations named in said answer and return of one William C. Lane, but that, on the contrary, said William C. Lane acquired the property and assets of said several corporations in order that he might transfer the same to the said International Harvester Company of New Jersey on the organization of said company; that the said William C. Lane, acting for the persons who were effecting the organization of the International Harvester Company of New Jersey, received to himself the transfer of the assets of the several corporations named in said answer and return, and the title to said property and assets of said corporations were transferred to said William C. Lane to hold until the said International Harvester Company of New Jersey was organized, and thereupon were transferred by said William C. Lane to said International Harvester Company of New Jersey; that on the organization of said International Harvester Company of New Jersey, by a certain trust agreement made by the stockholders therein, the legal title of all of the stock of such corporation was placed in the hands of George W. Perkins, Charles Deering, and Cyrus H. McCormick as trustees for the real owners, and said Perkins, Deering, and McCormick were to retain the title to said stock for the purpose of exercising the voting power thereof until August 1, 1912; that since the creation of said voting trust, said trustees have held said stock and exercised the powers conferred upon them by said agreement; that said voting trust was made and effected in furtherance of the said unlawful combination, pool, trust, agreement, and arrangement accomplished in the organization of said International Harvester Company of New Jersey, as alleged in said information; that in furtherance of said unlawful purposes of said combination, the legal title of all of the stock of the International Harvester Company of America was also placed in the hands of said George W. Perkins, Charles Deering, and Cyrus H. McCormick for the benefit of the International Harvester Company of New Jersey and its stockholders shortly after the organization of said International Harvester Company of New Jersey, and since said date the legal title to the stock of the International Harvester Company of America has remained in said Perkins, Deering, and McCormick; that after the organization of said International Harvester Company of New Jersey, the respondent herein, the International Harvester Company of America, was maintained in existence and continued in the business of manufacturing and selling agricultural implements, tools, and machinery in the State of Missouri, and elsewhere, by the said International Harvester Company of New Jersey, to further the unlawful purposes of limiting trade, fixing and maintaining prices, and defeating competition in the purchase and sale of agricultural implements in the State of Missouri and elsewhere, and that since said date the International Harvester Company of America has been a mere blind and cover in the carrying out of said unlawful purposes, and has been a mere device to enable the International Harvester Company of New Jersey to engage in the manufacture and sale of agricultural implements, tools, and machinery in the State of Missouri, in evasion of the laws of the State of Missouri, which prohibited and made it unlawful for the International Harvester Company of New Jersey to do business therein.

Wherefore, and for the reasons alleged in said information, relator again prays that said International Harvester Company of America may be excluded from all corporate rights, privileges, and franchises exercised or enjoyed by it under the laws of the State of Missouri, with its franchise, license, and certificate, to do business in this State of Missouri; that its franchise, license, and certificate to do business in this State be declared forfeited, and that all, or such portion of its property as the court may deem proper, be confiscated unto the State, or in lieu thereof a fine be imposed upon it in punishment of the perversion, usurpation, abuse, and misuse of franchise, as herein described.

HERBERT S. HADLEY,
Attorney General.

FRANK BLAKE,
Assistant Attorney General.

STATE EX REL. HERBERT S. HADLEY, ATTORNEY GENERAL, RELATOR, *vs.* INTERNATIONAL HARVESTER COMPANY OF AMERICA, RESPONDENT.

No. 14546.

Now, at this day, it appearing to the court from the pleadings in the above-entitled cause that issues of fact are joined therein, therefore, on motion of the attorney general that a special commissioner be appointed by the court to take the testimony upon the issues joined in said cause, it is ordered by the court that Judge Theodore Brace, of Paris, Missouri, be, and he is hereby, appointed special commissioner to take the testimony upon the issues joined in said cause, with full power and authority to issue subpoenas, compel the attendance of witnesses and the production of papers, books, and other documents, to issue attachments therefor, and to hear and determine all objections to testimony and to admit or exclude the same in the same manner and to the same extent as this court might in the trial of the case before the court, and to report the testimony, with his findings of fact thereon, together with his findings as to the law upon each issue tendered to him by the respective parties, and to state his conclusions of law in his final report; exceptions to findings of fact and law so made by said special commissioner to be filed by either party so desiring within ten days after the filing of the commissioner's report and findings.

STATE OF MISSOURI, *sct.*:

I, John R. Green, clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true, and complete copy of the order of said supreme court, entered of record on January 27, 1908, at the October term, 1907, of said court, appointing Judge Theodore Brace special commissioner in the case of State ex rel. *vs.* International Harvester Company of America.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Jefferson, State of Missouri, this 7th day of May, A. D. 1908.

[SEAL.] JOHN R. GREEN,
Clerk of the Supreme Court of the State of Missouri.

In the Supreme Court of Missouri. Court en banc. October term, 1907

STATE OF MISSOURI ON THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, *vs.* INTERNATIONAL HARVESTER COMPANY OF AMERICA, A CORPORATION, RESPONDENT.

OATH OF OFFICE OF SPECIAL COMMISSIONER.

Theodore Brace, of Paris, Monroe County, Missouri, having been, on the 27th day of January, 1908, by proper order of record, appointed by the Supreme Court of the State of Missouri, special commissioner to take the testimony upon the issues joined in the above-entitled cause, with the power to issue subpœnas compelling the attendance of witnesses, the production of papers, books, and other documents, to issue attachments therefor, and to hear and determine all objections to testimony, to admit or exclude the same in the same manner and to the same extent as the supreme court might in the trial of the above cause before the court, and to report the testimony, with his findings of fact thereon, together with his findings as to the law upon each issue tendered to him by the respective parties, and to state his conclusions of law in his final report to the Supreme Court of the State of Missouri, a duly authenticated copy of which order is hereto attached, being duly sworn, makes oath and says that as special commissioner he will faithfully and fairly hear and examine said cause, make a just, impartial, and true report, and with all convenient speed, faithfully comply with the said order of the court, according to the best of his ability and understanding.

THEODORE BRACE.

Subscribed and sworn to before me, John R. Green, clerk of the Supreme Court of the State of Missouri.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 7th day of May, A. D. 1908.

[SEAL.] JOHN R. GREEN,
Clerk of the Supreme Court of the State of Missouri.

REPORT OF THE COMMISSIONER.

(Filed September 6, 1910.)

The undersigned, Theodore Brace, appointed by the Supreme Court special commissioner to take the testimony upon the issues joined in the above entitled cause and to report the same with his finding of facts thereon, together with his findings as to the law upon the issues tendered and to state his conclusions of law in his final report, having taken all the evidence offered by the parties, begs leave to report the same as it appears on the 1,570 pages of the typewritten transcript thereof and also in the printed volume of 819 pages herewith filed, in which also appears all his proceedings in the taking thereof, and submits the following as his finding of facts and law, and his conclusions of law upon the issues joined thereon—

FINDING OF FACTS.

The respondent is a corporation organized December 12th, 1881, under the laws of Wisconsin by the corporate name of "The Parker Dennett Harvesting Company," with a capital stock of $100,000, the business thereof being the manufacture, purchase, sale, and repair of harvesting machines and other kinds of farm machinery and implements.

By amendment of its articles of association on the 15th of March, 1882, its name was changed to "The Dennett Harvesting Machine Company." By further amendments on the 6th of February, 1883, its capital stock was increased to $250,000. On the 9th of April, 1884, to $500,000, and on the 19th of November, 1884, its name was changed to the "Milwaukee Harvester Company." On the 15th of April, 1889, its capital stock was increased to $750,000. On the 5th of April, 1892, it was licensed to do business in the State of Missouri. On the 3d of February, 1893, its capital stock was increased to $1,000,000, and on the 8th of September, 1902, its name was changed to The International Harvester Company of America. Its plant was located in the city of Milwaukee, Wisconsin, and the trade name of its harvesting machines was "*The Milwaukee.*" During these years it was actively engaged in the manufacture and sale of these machines in competition with the machines of many other independent companies, among these, with the "McCormick," manufactured by the McCormick Harvester Company, incorporated under the laws of the State of Illinois September 11th, 1879, and licensed to do business in the State of Missouri on the 5th of October, 1891. "The Plano," manufactured by the Plano Manufacturing Company, incorporated under the laws of the State of Illinois March 3d, 1881, and licensed to do business in the State of Missouri on the 11th of February, 1892. "*The Champion,*" manufactured by the Warder, Bushnell & Glessner Company, incorporated under the laws of the State of Ohio, October 18, 1886, and licensed to do business in the State of Missouri on the 29th day of October, 1891. "*The Osborne,*" manufactured by D. M. Osborne and Company, incorporated under the laws of the State of New York on the 29th of April, 1875, and licensed to do business in the State of Missouri on the 28th of September, 1891. "*The Buck Eye,*" manufactured by the Altman Miller Company, incorporated under the laws of the State of Ohio in the year 1865 and licensed to do business in the State of Missouri on the 6th of August, 1891. "*The Deering,*" manufactured by the Deering Company, a copartnership, in the State of Illinois, and with several other harvesting machines of minor importance, the names of which and their manufacturers need not be set out in this connection. Of the aggregate amount of business done in the United States and in the State of Missouri by all those engaged in the harvesting machine trade in the year 1902, and for several years prior thereto, from 80 to 90 per cent thereof was done by six of the companies aforesaid, as follows, in the relative order of the volume of the business done by each: (1) The McCormick Company, (2) The Deering Company, (3) The Warder-Bushnell & Glessner (Champion) Company, (4) The Plano Company, (5) The Osborne Company, (6) The Milwaukee Company. During those years the competition between these six companies was active, persistent, strenuous, and fierce. It grew in intensity as the years went by, and was fraught with so many evils from the viewpoint of the manufacturers that to relieve the situation, in June, 1902, Cyrus H. McCormick, president of the McCormick Company, went to New York, had an interview with George W. Perkins, a member of the firm of J. P. Morgan & Co., and fully explained to him the situation of the harvester business from his standpoint. This led to subsequent interviews between Perkins and McCormick and between Perkins and the controlling officers of *The Deering Company, The Warder-Bushnell & Glessner Company, The Plano Company, and The Milwaukee Company,* the result of which was that on the 28th of July, 1902, Perkins having in the meantime secured an option for J. P. Morgan & Co. on all the

property and capital stock of the Milwaukee Company, an agreement was reached between these five harvesting machine companies by which the property of each was to be transferred to one William C. Lane, a disinterested financial agent, selected for that purpose by Perkins, to be by Lane conveyed and transferred to a corporation to be thereafter organized with a capital stock not exceeding $120,000,000, the properties to be paid for in shares of the capital stock of the proposed corporation. This agreement was manifested by separate written contracts of that date, executed by and between Lane and each of said companies of the same general purport and effect, one of which will sufficiently illustrate the agreement; the one with the McCormick Company used for that purpose is as follows:

AGREEMENT OF JULY 28, 1902.

AN AGREEMENT made and entered into this 28th day of July, nineteen hundred and two, by and between the McCormick Harvesting Machine Company (hereinafter called the "vendor"), party of the first part, and William C. Lane (hereinafter called the "purchaser"), party of the second part.

WHEREAS the vendor is a corporation duly organized and existing under the laws of the State of Illinois and owns certain manufacturing properties located at Chicago, Illinois, and employed in the manufacture of harvesting machinery and other properties intended for use in connection therewith; and

WHEREAS the purchaser desires to acquire said properties and intends, upon the acquisition of said properties to sell, convey, and transfer the same to a corporation now existing or hereafter to be organized under the laws of the State of Illinois, or other State (hereinafter called the "purchasing company") with capital stock as hereinafter provided:

NOW, THIS AGREEMENT WITNESSETH that the parties hereto have agreed and covenanted as follows:

First. The vendor agrees for the considerations and upon the terms hereinafter stated to sell, assign, transfer, convey, and deliver unto the purchaser, his nominee or assign, by good and indefeasible title, free and clear of incumbrances, indebtedness and liabilities, except as herein stated, and the purchaser agrees to purchase, all and singular, the real estate, factories, plant,s buildings, improvements, machinery, patterns, tools, apparatus, fixtures, and appliances of the vendor, and all the patents, inventions, devices, patent rights, licenses, trade-marks, trade names, and good will of all and singular said property as a going concern, and also all of the products manufactured and process of manufacture, materials, supplies, and merchandise on hand at the time of closing said sale, and all and singular its then pending contracts for the purchase of property or materials or the sale of products; also, all interest in fiber lands, as well as all other property of the vendor, appertaining to the vendor's business aforesaid.

There shall also be sold and purchased with said properties $20,000,000 (at face value and accrued interest) of bills and accounts receivable, representing the sales made by the vendor. Such bills and accounts receivable are to mature prior to March 1, 1905, and are to be guaranteed as hereinafter provided. Cash may be substituted for the whole or any part of such accounts and bills receivable at the option of the vendor.

Second. The vendor agrees that as soon as practicable after the execution of this instrument, it will in pursuance of due authority to be conferred by the vote or consent of all of its stockholders, duly execute and acknowledge, and cause to be forthwith deposited with J. P. Morgan & Co., or a trust company designated by them, as depositary proper deeds and other instruments of conveyance and sale for the granting, conveying, and transferring, as aforesaid, unto the purchaser and its assigns, all the property hereinbefore recited, together with evidence of the vote or consent of the stockholders of the vendor, as aforesaid. Such depositary shall hold the said deeds and other instruments in escrow and deliver the same to the purchaser, or upon his order, only upon receiving for account of the vendor the consideration hereinafter provided and upon the performance by the purchaser of the provisions hereof.

Third. The vendor agrees to deliver to said depositary, as soon as practicable, full statements in respect of its property and its assets and liabilities, its contracts for the purchase of materials and other property and for the sale of its manufactured products, and otherwise, relating to its property and business. The vendor agrees that, pending the performance of and while this contract is in force, it will not, without the written consent of the purchaser, or of said purchasing company, enter into any new contracts or assume any new obligations or make any purchases or sales such as are necessary and customary in the ordinary conduct of its regular business or to maintain it as a going concern and except such as may be necessary for the performance of agreements

already entered into; nor make payments in advance of their maturity on pending contracts. The vendor further agrees that during and while this contract is in force no increase shall be made in its capital stock, or in the capital employed in its business, and no bonds issued, and that no mortgage, lease, or conveyance shall be made upon or in respect of its real estate or plant without the written consent of the purchaser; and, also, that in case of any difference of opinion between the vendor and the purchaser in relation to the conduct of the business of the vendor, such difference shall be decided by J. P. Morgan or George W. Perkins, whose decision shall be final. All service contracts of the vendor taken over by the purchasing company shall be terminable on sixty days' notice, unless specific cases otherwise determined by said purchasing company; and the vendor shall indemnify the purchasing company against any claim under profit-sharing contracts. In the case of any property delivered to the purchaser by the vendor which is subject to incumbrance, the amount of the incumbrance shall be deducted in determining the value thereof.

Fourth. The purchaser and said purchasing company, and his or its nominees, the appraisers, accountants, and counsel, shall have the right to examine the deeds and other instruments of conveyance and transfer so to be deposited by the vendor with with the depositary, as aforesaid, and shall, if the purchaser shall so require, be furnished with abstracts of title, title deeds, and surveys, which may facilitate the examination of the title to the property to be conveyed or transferred and shall have free access to all the deeds, contracts, books, and records of the vendor for the purpose of examining and verifying the statements made with respect to its property, business assets, liabilities, and corporate status.

Fifth. The purchase price to be paid by the purchaser to the vendor for all and singular said property shall be the aggregate of the several appraisals and valuations hereinafter provided for and of said accounts and bills receivable and cash, if any, and shall be payable in full paid and nonassessable shares of the capital stock of said purchasing company taken at par.

In order to make such appraisals and fix and determine such valuations, the property of the vendor shall be classified as follows:

(1) Real estate, buildings, factories, warehouses, fixtures, machinery, tools, patterns, drawings, moulds, and all other personal property used in connection with or appertaining to the vendor's business and which is not intended for sales in the ordinary course of business or to form part of or to be consumed in the manufacture of the vendor's products, and including pending contracts for purchase of real property and for construction of buildings or fixtures, but not including the property and contracts otherwise classified. The assets of this class are hereinafter collectively designated as "Plant."

(2) All materials on hand, manufactured, unmanufactured or in process of manufacture, including any and all articles intended to form part of or to be used in manufacturing the vendor's product. The assets of this class are hereinafter collectively designated as "Materials on hand."

(3) Unexecuted contracts or orders for the sale of the vendor's manufactured products, but not including contracts or orders for deliveries after the year 1902, for which latter contracts and orders (although to be transferred) no allowance shall be made. No allowance shall be made for contracts or orders for delivery prior to January 1, 1903, unless the material necessary for the completion of the machines or other manufactured products shall be in the possession of the vendor and upon its plant at the time of the appraisal. Such contracts are hereinafter collectively desingated as "Pending sales."

(4) All contracts heretofore entered into by the vendor for the purchase of material to be used in the manufacture of its products. Such contracts are hereinafter collectively designated as "Material contracts."

(5) The railroad property and equipment belonging to the vendor, including the lease which has been agreed upon with the Atchison, Topeka & Santa Fe Railroad Company, such property heing hereafter designated as the "McCormick railroad."

(6) Patents, patent rights, devices, inventions, licenses, trade-marks, trade names, and good will, *including the value of the established business, name, standing in the trade, stability of business, organization, trade, or custom as a going concern.* Such assets are hereinafter collectively designated as "Patents, good will, etc."

The value of the plant, as above defined, shall be ascertained and determined by three appraisers, who shall fix the present value of such plant as a going concern. One of such appraisers shall be nominated and appointed by the vendor and the other two by J. P. Morgan & Co.

The present value to a going concern of said materials on hand, of the said pending sales, and of the said material contracts, as above defined, shall similarly be determined by three appraisers, one to be nominated and appointed by the vendor and

two by J. P. Morgan & Co. Such appraisers shall make allowance in their judgment for unprofitable contracts.

The value of the McCormick Railroad to a going concern, as above defined, shall be determined by J. P. Morgan or George W. Perkins.

The value of the patents and good will shall, for the purposes of this contract, be a sum equal to the net profits of the vendor during the two years ending November 30, 1902, as ascertained in the manner hereinafter provided, plus ten per cent thereof; and to such amount shall be added the value of the name, standing in the trade, stability of business, organization, trade, custom, etc., of the vendor as a going concern, which value shall be fixed by J. P. Morgan or George W. Perkins in his sole discretion.

The profits of said two years shall be ascertained and reported to J. P. Morgan & Co. by three accountants, one of whom shall be nominated by the vendor and the other two by J. P. Morgan & Co. In calculating the net profits of the business there shall be excluded all allowance for interest on bills and accounts receivable as well as the cost of collecting bills and amounts receivable and all interest paid or payable on moneys used by the vendor and belonging to the trustees of Mary V. McCormick or Cyrus H. McCormick, Harold F. McCormick, or Stanley McCormick, and interest on the sum of $1,000,000 borrowed by the vendor on the security of property belonging to the Messrs. McCormick individually. Said accountants in calculating the net profits for said two years shall make allowance for depreciation or loss, if any, on bills and accounts receivable, for depreciation or loss, if any, of materials on hand, or for depreciation, if any, of the said plant from wear and tear or otherwise. In each case hereinbefore enumerated the decision, appraisal, or report of a majority of the appraisers or accountants or the decision of J. P. Morgan or George W. Perkins (if sole arbitrator or appraiser), as the case may be, shall be binding and conclusive upon the parties hereto.

Sixth. Payment of the amount of all contracts or orders for sales of manufactured products included as assets of the vendor, as aforesaid, and transferred under this contract shall be guaranteed to the satisfaction of J. P. Morgan & Co. by the vendor, and the net value thereof shall be appraised on that basis. Any and all accounts and bills receivable transferred by the vendor hereunder shall be taken as their face value and accured interest to date of transfer; but the vendor shall guarantee and hereby does guarantee, that the purchaser or purchasing company shall realize thereon such face value and interest accrued and to accrue, and that said principal and interest shall all be received on or prior to the first day of March, 1905. The collections shall be made by the purchasing company, but the expense of collection shall be borne by the vendor. Pending such collections the vendor agrees to advance and pay to the purchasing company on demand, from time to time, on account of such guaranty such amounts as the board of directors of the purchasing company may determine as convenient for the conduct of its business, but not in excess of such amounts as J. P. Morgan & Co. may from time to time approve. If such advance payments be made by the vendor, then the purchasing company shall transfer to the vendor or its nominees an equal amount in principal and accrued interest of uncollected accounts or bills receivable of the earliest maturities. The purchasing company may take such measures as to it may seem wise for the collection of the accounts and bills receivable and grant extensions and indulgencies to debtors by whom the same are payable without release of or prejudice to such guaranty or extension or change of the obligation of the vendor to make payments as aforesaid. The purchasing company shall from time to time, on demand, furnish the vendor a full statement showing which accounts and bills receivable remain unpaid, and what, if any, disposition has been made in regard thereto or steps taken to enforce the collection thereof.

The vendor shall secure the guaranties on this article provided for, by collateral or otherwise, to the satisfaction of J. P. Morgan & Co. in their discretion.

Seventh. The purchasing company shall have such corporate title, capital stock, organization, by-laws, directors, and committees as may be approved by J. P. Morgan & Co. and shall have, in addition to materials on hand and inventories, a working capital of $60,000,000, to be represented by cash or bills and accounts receivable guaranteed as aforesaid.

Eighth. The amount and the classes (if there be more than one class) of the capital stock of the purchasing company shall be determined after the ascertainment of the aggregate value of all its assets and properties; but such amount and such classes shall severally be satisfactory to J. P. Morgan & Co. If, however, there be only one class of stock—the capital stock—the capital stock shall not exceed $120,000,000 par value, even though the aggregate value of the assets and properties of the purchasing company be in excess thereof. If there be both preferred stock and common stock

the preferred stock shall not exceed $120,000,000 par value and shall entitle the holders to cumulative preferential dividends at the rate of but not to exceed six per cent per annum and accumulated dividends; and the common stock shall not exceed the remaining value of the corporate assets and the properties as so determined, which value may be ascertained and determined irrespective of the special appraisals which are to be made under this agreement.

If there shall be two classes of stock, then and in that event the vendor shall be entitled to receive as additional purchase price under this agreement common stock to an amount that shall bear to the total issue thereof the same proportion that the preferred stock to be received by the vendor under this agreement shall bear to the total issue of preferred stock.

Ninth. The purchase provided for in this contract shall take effect as of such day in September, 1902, as shall be designated by the purchaser with the approval of J. P. Morgan & Co. the appraisals shall be made as of such dates as nearly as practicable, and the performance of the contract shall be completed prior to January 1, 1903.

Tenth. The charter or certificate of incorporation or organization of the purchasing company shall provide, among other things, that the capital stock of the corporation shall not be increased or diminished except upon the affirmative vote or consent of the holders of at least two-thirds of each class of the outstanding capital stock of the company. Said charter or certificate may also provide that the stockholders may enter into a voting trust of their stock for a limited period. The charter or certificate shall likewise provide that no mortgage or lien upon the real property, plants, tools, or machinery of the purchasing company shall be created without the affirmative vote or the consent of the holders of at least two-thirds of each class of the outstanding capital stock.

Eleventh. The vendor undertakes and agrees that it, or the holders of the stock of the purchasing company so to be issued in payment for the property to be transferred and conveyed under this agreement, shall deposit their stock with J. P. Morgan & Co. or a trust company to be designated by them, as depositary, upon a voting trust, which shall provide, among other things, for the appointment of three voting trustees, one of whom shall be J. P. Morgan or George W. Perkins, and the other two shall be persons appointed by J. P. Morgan & Co. The voting trust agreement shall be for the period of ten years, with provision, however, that it may be terminated at any time after the expiration of five years upon ninety days' notice, if a majority of the voting trustees shall so decide. The capital stock of the purchasing company shall be transferred to such voting trustees, who shall issue transferable certificates of beneficial interest entitling the holder to any dividends, distribution of profits, and subscription rights which may accrue in respect of the stock so held by the voting trustees, and upon the termination of the voting trust entitling the holder to a proportionate amount of the stock so transferred to the voting trustees. The form, terms, and provisions of the voting trust agreement shall be subject to the approval of J. P. Morgan & Co. The voting trust agreement shall contain adequate restrictions upon the voting power of the voting trustees in respect of an increase or diminution of capital stock, or the creation of any mortgage as aforesaid, so that any vote or consent by the voting trustees for any such increase or diminution, or mortgage, shall be given only upon the affirmative vote or written consent of the owners of a corresponding amount of the voting trust certificates of interest outstanding.

The vendor, or a majority of its stockholders, shall further agree with J. P. Morgan & Co. that during the first year after the issue of such stock or voting trust certificate, the vendor or its stockholders shall own, and shall refrain from selling or otherwise disposing of, at least eighty per cent, of the original holdings acquired under this agreement or otherwise; during the second year at least sixty per cent of such original holdings; during the third year at least forty per cent of such original holdings; and thereafter and during the existence of the voting trust, at least one-third of such original holdings; provided, however, the vendor (or its stockholders) may at any time after the expiration of the fourth year withdraw from the custody of J. P. Morgan & Co. and sell or otherwise dispose of, the remaining one-third of said original holdings, or any part thereof, but in such case any voting trustee representing such holdings shall immediately resign as trustee if desired by the two remaining trustees. A successor shall thereupon be appointed by the other two trustees.

As guarantee for the performance of the foregoing covenant not to sell or otherwise dispose of stock or voting trust certificates the vendor or its stockholders shall severally pledge with J. P. Morgan & Co. an amount of stock or voting trust certificates equal to the proportion which they have agreed to continue to own, which stock shall be released and delivered to them or upon their orders from time to time as they may become entitled to sell; but, except as herein otherwise provided, one-third of the total original holdings as aforesaid shall remain pledged with J. P. Morgan & Co. during the existence of the voting trust.

In case during the first year after the issue of said stock by the purchasing company the vendor shall desire to sell any of the stock or voting trust certificates which it is free to sell under the provisions hereof, it shall offer the stock to J. P. Morgan & Co. by notice in writing, specifying the amount of the stock and the price at which the same is offered, and the vendor shall be entitled to sell such stock to others only in case J. P. Morgan & Co. shall not within twenty days thereafter purchase said stock at the price named in the notice or at a price satisfactory to the vendor.

Twelfth. This contract, or any part thereof, may be transferred by the purchaser to the purchasing company, and such purchasing company may thereupon enforce all and singular its terms and conditions as fully to all intents and purposes as if it were a party thereto. The place of performance of this contract shall be at the office of the Hudson Trust Company, Hoboken New Jersey.

Thirteenth. The individual holders of a majority of the capital stock of the vendor shall jointly and severally guarantee the performance of this contract by the vendor as well as the substantial performance of all and singular the covenants, agreements and guaranties which may survive the dissolution of the vendor, should such dissolution be finally determined upon.

The individual holders of all the capital stock of the vendor shall as soon as practicable, and before the final consummation of this contract, cause to be deposited with J. P. Morgan & Co. or with a trust company to be designated by them, as depositary, certificates representing all the capital stock of the vendor, fully endorsed for transfer in blank, and such depositary upon the vendor receiving said purchase price, shall deliver said certificates to the purchaser, his nominee or assign, but the original stockholders shall be entitled to all payments payable upon said stock as their distributive share of the purchase price hereunder, or of any other assets of the vendor not herein undertaken to be conveyed or transferred.

Fourteenth. The purchaser undertakes to duly secure by contract the appointment of J. P. Morgan & Co. as the fiscal agents of the purchasing company and their acceptance of such appointment in order that the purchasing company may secure and have the benefit and advantage of the advice of said firm in the management of its financial affairs.

If any dispute should arise under this contract as to its true intent or meaning, or in respect of the performance of any part thereof, whether between the parties hereto or between the vendor and the purchasing company, the matter in dispute in each and every case shall be left to J. P. Morgan or George W. Perkins as sole arbitrator, and the decision of such arbitrator shall be binding and conclusive upon the parties.

Fifteenth. In case any appraiser, arbitrator, accountant or voting trustee shall for any reason fail or sease to serve, then and in said event another or a successor shall be nominated and appointed in his place by the vendor or by J. P. Morgan & Co. respectively, as the case may be, subject, however, in the case of voting trustees, to the provisions of the voting trust agreement.

References in this agreement to J. P. Morgan & Co. shall apply to that firm as now or hereafter constituted.

In witness whereof the party of the first part has caused these presents to be executed in its corporate name by its president and its corporate seal to be hereunto affixed, attested by its secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written.

McCORMICK HARVESTING MACHINE COMPANY,
By CYRUS H. McCORMICK, *President.*

Attest:
HAROLD F. McCORMICK, *Secretary.*
[SEAL.]

WM. C. LANE.

The only material difference between this and the other contracts was that the amount J. P. Morgan & Co. was to receive for the Milwaukee company's property was fixed at the amount of their option therefor, and the amount of the guaranteed bills and accounts receivable of each of the other companies was different. In pursuance of this agreement and in accordance with the terms of these several written contracts, on the 12th of August, 1902, The International Harvester Company was incorporated under the laws of the State of New Jersey with an authorized capital stock of $120,000,000, divided into 1,200,000 shares of the par value of $100 each, and the certificates of stock therefor delivered to Lane, and on the 13th day of August, 1902, the same were by him delivered to George W. Perkins, Charles Deering, and Cyrus H. McCormick and deposited with J. P. Morgan & Co., in pursuance of the contracts aforesaid and of a written agreement between them of that date, as follows:

VOTING TRUST AGREEMENT AUGUST 13, 1902.

This agreement, made in the city of New York this thirteenth day of August, one thousand nine hundred and two, by and between William C. Lane, party of the first part, and George W. Perkins, Charles Deering, and Cyrus H. McCormick (hereinafter called the "voting trustees"), parties of the second part.

Witnesseth as follows:

Whereas the International Harvester Company (hereinafter called the "company") is a corporation organized under the laws of the State of New Jersey with a capital stock of $120,000,000, divided into 1,200,000 shares, of the par value of $100 each, all of which stock has been issued and is outstanding; and

Whereas the party of the first part has caused to be delivered to the voting trustees certificates for fully paid shares of the capital stock of the company to the amount of its entire capital stock (excepting such shares as are necessary to qualify directors), and said certificates, together with such other certificates for stock of the company as hereafter, from time to time, may be delivered hereunder are to be held and disposed of by the voting trustees under and pursuant to the terms and conditions hereof;

Now, therefore,

First. The voting trustees agree with the party of the first part, and with each and every holder of stock trust certificates issued as hereinafter provided, that, from time to time, upon request, they will cause to be issued to the party of the first part, or upon his order, in respect of said stock of the company received from him, certificates in substantially the following form:

International Harvester Company.

No. Shares.

STOCK TRUST CERTIFICATES.

This certifies that, as hereinafter provided, ——— ——— will be entitled to receive a certificate or certificates for ——— fully paid shares of one hundred dollars each of the capital stock of the International Harvester Company and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned voting trustees upon a like number of such shares standing in their names, such dividends, if received by the voting trustees in stock of said company, to be payable in stock trust certificates. Until the actual delivery of such stock certificates the voting trustees shall possess, in respect of any and all of such stock, and shall be entitled, in their discretion, to exercise all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said company, it being expressly stipulated that no voting right passes by or under this certificate or by or under any agreement expressed or implied.

This certificate is issued pursuant to, and the rights of the holder are subject to and limited by, the terms and conditions of a certain agreement, dated the thirteenth day of August, 1902, by and between William C. Lane and the undersigned voting trustees.

Stock certificates shall be due and deliverable in exchange for stock trust certificates on but not before August 1, 1912, unless a majority of the voting trustees elect, as they may, to terminate said agreement after August 1, 1907, upon not less than ninety days' notice.

This certificate is transferable only on the books of the voting trustees by the registered holder thereof, either in person or by attorney duly authorized, according to rules established for that purpose by the voting trustees, and on surrender thereof and until so transferred the voting trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that they shall not be required to deliver stock certificates hereunder without surrender hereof.

This certificate is not valid unless duly signed on behalf of the undersigned voting trustees by ——— their agents and also registered by ——— as registrar.

IN WITNESS WHEREOF the undersigned voting trustees have caused this certificate to be signed by their duly authorized agents ——— ——— this ——— day of ———, one thousand nine hundred and ———.

VOTING TRUSTEES,
By ———, Their Agents.
By ———, President.

Registered this ——— day of ———, 19—.

———, Registrar,
By ———, Secretary.

Second. At any time after August 1, 1907, if a majority of the voting trustees so decide, this agreement may be terminated; but at least ninety days' notice of an intention to terminate this agreement must be given by the voting trustees according to the provisions of article tenth hereof. This agreement shall in any event terminate on August 1, 1912, without notice by or action of the voting trustees. On August 1, 1912, or upon the earlier termination of this agreement, the voting trustees in exchange for or upon surrender of any stock trust certificate then outstanding shall, in accordance with the terms hereof, deliver proper certificates of stock of the company and may require the holders of stock trust certificates to exchange them for certificates of capital stock.

In case on or after the termination of said agreement the voting trustees shall deposit with an incorporated bank or trust company of good standing, having an office in the city of New York, stock certificates properly endorsed for transfer in blank, representing stock of the company to a par amount equal to the par amount of the stock trust certificates outstanding, with authority in writing to such bank or trust company to deliver the same in exchange for stock trust certificates when and as surrendered for exchange as herein provided, then all further liability of said trustees, or any of them, for the delivery of stock certificates in exchange for stock trust certificates shall cease and determine.

Third. The term "company," for the purposes of this agreement and for all rights thereunder, including the issue and delivery of stock, shall be taken to mean the said corporation organized under the laws of the State of New Jersey, or any successor corporation or corporations into which the same may be consolidated or merged.

Fourth. From time to time hereafter the voting trustees may receive any additional fully paid shares of the capital stock of the company, and in respect of all such shares so received will issue and deliver certificates similar to those above mentioned, entitling the holders to the rights above specified. In case the company shall hereafter have both common and preferred stock, the voting trustees may receive, subject to the provisions hereof, certificates representing fully paid stock of each class, and the stock trust certificates shall indicate upon their face whether they represent common or preferred stock, and holders of stock trust certificates representing one class of stock shall have no interest in or claim upon stock of the other class. In any such event the stock trust certificates outstanding shall be surrendered by the holders thereof in exchange for new certificates specifying the class of stock, whether preferred or common, represented thereby. In case the voting trustees shall receive any stock of the company issued by way of dividend upon stock held by them subject to said agreement, they shall hold such stock subject to the terms of said agreement and shall issue stock trust certificates representing such stock to the respective registered holders of the then outstanding stock trust certificates entitled to such dividend.

Fifth. Any voting trustee may at any time resign by delivering to the other trustees, in writing, his resignation, to take effect ten days thereafter. In case of the death or the resignation or the inability of any voting trustee to act, the vacancy so occurring shall be filled by the appointment of a successor or successors, to be made as follows: Any successor in the line of succession to George W. Perkins shall be appointed by J. P. Morgan & Co., as said firm now is or may hereafter be constituted. Any sucessor in the line of succession to Charles Deering shall be appointed by James Deering, or, in case of his failure to act, by Richard F. Howe, and in case of the failure of either to act by the other two voting trustees. Any successor in the line of succession to Cyrus H. McCormick shall be appointed by Harold F. McCormick, or, in case of his failure to act, by Stanley McCormick, and in case of the failure of either to act by the other two voting trustees. The term "voting trustee," as used herein and in said certificate, shall apply to the parties of the second part and their successors hereunder.

Sixth. The voting trustees may adopt their own rules of procedure. The action of a majority of the voting trustees expressed from time to time at a meeting or by writing with or without a meeting shall, except as otherwise herein stated, constitute the action of the voting trustee and have the same effect as though assented to by all. Any voting trustee may vote in person or by proxy and may act as a director or officer of the company.

Seventh. In voting the stock held by them the voting trustees will exercise their best judgment from time to time to secure suitable directors, to the end that the affairs of the company shall be properly managed, and in voting and in acting on other matters which shall come before them as stockholders or at stockholders' meetings will likewise exercise their best judgment; but they assume no responsibility in respect of such management or in respect of any action taken by them or taken in pursuance of their consent thereto as such stockholders, or in pursuance of their

vote so cast, and no voting trustee shall incur any responsibility by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this agreement, except for his own individual wilful malfeasance.

Eighth. The voting trustees possess and shall be entitled in their discretion to exercise until the actual delivery of stock certificates in exchange for stock trust certificates, all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said company, it being expressly stipulated that no voting right passes to others by or under said stock trust certificates, or by or under this agreement or by or under any agreement, expressed or implied; the voting trustee shall not, however, during the pendency of this agreement vote in respect of the shares of the capital stock of the company held by them to authorize or consent to any mortgage or other lien upon the property of the company, or (except as herein otherwise specifically provided) to authorize any increase or diminution in the amount of the authorized capital stock of said company, except with the consent in each instance of the holders of stock trust certificates representing two-thirds in amount of each class of stock at the time deposited hereunder, given in writing or by vote at a meeting called for that purpose, provided, however, that the voting trustees may, in their discretion, prior to July 1, 1903, without the consent of holders of any stock trust certificates, consent to and authorize the increase of the company's capital stock to an amount not exceeding one hundred and eighty million dollars ($180,000,000).

Ninth. For the purpose of this agreement any consent in writing by the holders of stock trust certificates may be in any number of concurrent instruments of similar tenor, and may be executed by the certificate holders in person, or by agent or attorney appointed by an instrument in writing. Proof of the execution of any such consent or of a writing appointing any such agent or attorney, or of the holding by any person of stock trust certificates issued hereunder, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the voting trustees with regard to any action taken by them under such consent, if made in the following manner, viz: (a) The fact and date of the execution by any person of any such consent may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of New York, acknowledgment of deeds to be recorded in any State, certifying that the person signing such consent acknowledged to him the execution thereof; or by the affidavit of a witness to such execution. (b) The amount of stock trust certificates held by any person executing any such consent and the issue of the same may be proved by a certificate executed by any trust company, bank, or other depositary (wheresoever situated) whose certificate shall be deemed by the voting trustees to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it, the stock trust certificates numbered and described in such depositary's certificate.

Tenth. All notices to be given to the holders of stock trust certificates hereunder shall be given either by mail to the registered holders of stock trust certificates at the addresses furnished by such holders to the voting trustees or to the agents of the voting trustees, or by publication in two daily papers of general circulation in the city of New York, and in two daily papers of general circulation in the city of Chicago, twice in each week for two successive weeks; and any call or notice whatsoever, when either mailed or published by the voting trustees as herein provided, shall be taken and considered as though personally served on all parties hereto, including the holders of said stock trust certificates, and such mailing or publication shall be the only notice required to be given under any provision of this agreement.

Eleventh. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF the several parties have hereunto set their hands and seals, in the city of New York, the day and year first above mentioned.

Thereupon a board of directors was selected by said trustees as follows:

Cyrus H. McCormick, former president and director of the McCormick Harvester Company.

Harold F. McCormick, former vice president of the McCormick Harvester Company.

Stanley F. McCormick, formerly of the McCormick Harvester Company.

Cyrus Bentley, former attorney for the McCormick Harvester Company, and first general counsel for the International Harvester Company.

Charles Deering, former member of the Deering Company.

James Deering, former member of the Deering Company.

Richard F. Howe, former member of the Deering Company, and brother-in-law of Deering Brothers.

William Deering, member of the Deering firm.
Wm. H. Jones, former vice president of the Plano Company.
John J. Glessner, former vice president of the Warder-Bushnell and Glessner Company.
P. D. Cravath, attorney for J. P. Morgan & Company, and in whose office the transfer contracts were signed.
George W. Perkins, junior member of J. P. Morgan & Co. who, at the time of the combination, represented and controlled respondent company.
Charles Steele, member of the firm of J. P. Morgan & Company.
E. H. Gary of the Steel Trust.
George F. Baker, president of the First National Bank of New York, proposed as director by George W. Perkins.
W. J. Calhoun.
Norman B. Ream, New York capitalist.
Leslie D. Ward, resident director in State of New Jersey for jurisdiction purposes.
And officers as follows:
Charles Deering, chairman of board of directors
Cyrus H. McCormick, president.
James Deering, vice president.
Harold McCormick, vice president.
J. J. Glessner, vice president.
W. H. Jones, vice president.
Richard F. Howe, secretary.
Harold F. McCormick, treasurer.

And the International Harvester Company became fully organized, and thereafter all the properties of the McCormick Company, the Deering Company, the Warder-Bushnell & Glessner Company, the Plano Company, and the Milwaukee Company were transferred and conveyed to the International Harvester Company as provided for in the contracts aforesaid.

On the 2nd of September, 1902, a memorandum of agreement between the International Harvester Company and the Milwaukee Company was executed as follows:

AGREEMENT OF 2ND SEPTEMBER, 1902.

Memorandum of agreement made this 2nd day of September, 1902, between the International Harvester Company, a corporation of the State of New Jersey (hereinafter referred to as the manufacturing company), party of the first part, and the Milwaukee Harvester Company, a corporation of the State of Wisconsin (hereinafter referred to as the selling company), party of the second part:

The manufacturing company is engaged in the business of manufacturing harvesting and agricultural machinery, tools and implements and twine and in selling its products in the United States of America and other countries.

The selling company is duly authorized by law to engage in the business of selling harvesting and agricultural machinery, tools and implements and twine. The selling company desires to enter into a contract with the manufacturing company for the purchase and sale of the former's products in the United States of America and elsewhere.

In consideration of the premises and agreements herein contained and other valuable considerations, the receipt whereof from each party is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The selling company shall undertake the sale of the manufacturing company's products in the territory aforesaid, and shall maintain such branch houses, warehouses and agencies and employees as shall be necessary to that end. The selling company shall do such advertising and take such measures as shall be necessary to exploit the sale of the manufacturing company's products.

The selling company shall purchase from the manufacturing company from time to time such of the manufacturing company's products as it requires to fill its orders and carry a sufficient stock at its various warehouses and branch houses.

All of the manufacturing company's products purchased by the selling company shall be purchased free on board the cars at the city in which is located the particular plant at which the products purchased were manufactured, and all products so purchased and delivered shall be the property of the Selling Company.

The manufacturing company shall manufacture such harvesting and agricultural machinery, tools and implements, and twine of the kinds heretofore manufactured by the plants of the manufacturing company, as well of such other kinds as the parties hereto may agree upon as the selling company shall require for its business, and

shall carry such a stock of the various kinds of machinery, tools and implements, and twine as shall be necessary to meet the requirements of the selling company's business.

2. The prices to be paid by the selling company for the product of the manufacturing company purchased under the provisions of this contract shall be the following:

SCHEDULE.

The prices of any articles not expressly mentioned in this schedule shall be such as may be agreed upon by the general manager of manufacturing for the time being of the manufacturing company and the general manager of sales for the time being of the selling company, or as may be otherwise fixed in any legal way. Settlements between the two companies shall be made not later than the first day of February in each year for the business of the preceding year. The selling company may make payments either in cash or in accounts and bills receivable by it from its agents and customers, or partly in cash and partly in such accounts and bills receivable. The selling company hereby guarantees the payment at maturity of the principal of and interest upon all accounts and bills receivable so used in payment. In case any of such accounts and bills receivable are not paid at maturity, the same may, at the option of the manufacturing company, be reassigned to the selling company, and in such case the selling company shall pay the manufacturing company in cash the amount of principal of and interest accrued up to the time of such reassignment upon the accounts and bills receivable so reassigned.

The selling company further agrees that it will, without delay, take such action as shall be necessary in law for the changing of its corporate name from "Milwaukee Harvester Company" to "International Harvester Company of America."

This contract shall continue in force until October 1, 1903, and thereafter from year to year unless terminated by either party on any first day of October on at least thirty (30) days' previous notice in writing to the other.

IN WITNESS WHEREOF the parties to this contract have caused their respective corporate names to be hereunto subscribed by their respective presidents and their respective corporate seals to be hereunto affixed, duly attested by their respective secretaries, all as of the day and year first above written.

INTERNATIONAL HARVESTER COMPANY,
(Signed) By CYRUS H. MCCORMICK, *Its President.*
Attest:
[SEAL.] (Signed) RICHARD F. HOWE, *Secretary.*
MILWAUKEE HARVESTER COMPANY,
(Signed) By GEO. P. MILLER, *Its President.*
Attest:
[SEAL.] (Signed) ARTHUR W. FAIRCHILD, *Secretary.*

In pursuance of this agreement by an amendment of its articles of association adopted on the 5th of September, 1902, the name of the Milwaukee Harvester Company was changed to The International Harvester Company of America as heretofore stated and these articles were further amended on the 18th of September, 1902, by striking out all the provisions of said articles of association then in force and substituting new ones in harmony with the new purpose and name by which it has become the respondent in this case. In the meantime the capital stock of that company having been transferred to the said George W. Perkins, Charles Deering, and Cyrus H. McCormick in trust solely for the benefit of the stockholders of the International Harvester Company a board of directors and officers for that company were selected as follows:

DIRECTORS.

Charles Deering, of the Deering Company.
James Deering, of the Deering Company.
Richard F. Howe, of the Deering Company.
Cyrus H. McCormick, of the McCormick Company.
Harold F. McCormick, of the McCormick Company.
Stanley F. McCormick, of the McCormick Company.
J. J. Glessner, of the Warder, Bushnell & Glessner Company.
W. H. Jones, of the Plano Company.
George W. Perkins.

The new officers of the respondent company were made up exclusively of the then and former officers of the other four companies, they being also, at that time, officers of the International Harvester Company.

OFFICERS.

Charles Deering, chairman of board of directors.
Cyrus H. McCormick, president.
James Deering, vice president.
Harold F. McCormick, vice president.
J. J. Glessner, vice president.
W. H. Jones, vice president.
Richard F. Howe, secretary.
Harold F. McCormick, treasurer.

For the property and capital stock of this company, J. P. Morgan & Co., who represented it in the deal, had paid in cash the sum of $3,148,196.66. For their services and cash paid for attorney fees and all other expenses of the organization of the International Harvester Company, they charged the sum of $3,451,803.34, making $6,600,000, which was fixed as the amount of the capital stock of the International Harvester Company they were entitled to.

The appraisement of the tangible properties of the McCormick Company, the Deering Company, the Warder, Bushnell & Glessner Company, and the Plano Company was not concluded until some time in the year 1903, when the amount of the capital stock of the International Harvester Company, to which they were entitled therefor, was fixed at the sum of $53,400,000, although the appraisement was largely in excess of that amount. Thereupon stock trust certificates for $120,000,000, the whole amount of the capital stock of the International Harvester Company, were issued, of which J. P. Morgan & Co received certificates for shares of stock amounting to $6,600,000. The McCormick Company, the Deering Company, the Warder, Bushnell & Glessner Company, and the Plano Company received certificates for shares of stock amounting to $93,400,000, being $53,400,000 for their tangible property, and $40,000,000 for their guaranteed bills and accounts receivable or cash substituted therefor; and certificates for shares of stock to the amount of $20,000,000 were received by other parties who had subscribed therefor through J. P. Morgan & Company; who these subscribers were does not appear, but it seems that some of them were individual stockholders of these companies, for Mr. McCormick states in his evidence that it was "a matter of five or six millions or more that was subscribed for by the McCormick interests, aside from all we got from properties and stocks and from the receivables. We subscribed for additional stock voluntarily as a business investment, it was not a matter of contract or agreement," and that he believed that the members of the other companies subscribed for additional stock, "but not as much." The distribution of the stock trust certificates between the companies does not appear, but by some arrangement, the Warder, Bushnell & Glessner Company, instead of receiving all stock certificates for their property as the other companies did, received, according to the evidence of Mr. Glessner, "nearly a million and a half in money and about two millions in stock."

The International Harvester Company, having thus acquired all the property of the McCormick Company, the Deering Company, the Warder, Bushnell & Glessner Company, the Plano Company, and of the respondent company, and paid for the same with its capital stock; all of those companies ceased to do business as manufacturers and vendors of harvesting machines and other agricultural implements and that business which they had heretofore been engaged in, in competition with each other, was thereafter carried on solely by the International Harvester Company, *except* that the respondent company, whose capital stock the International Harvester Company had also acquired, and for which directors and officers had been selected by the trustees from those of the International Harvester Company, was thereafter maintained by that company as a separate corporate entity without capital except such as was vested in it for that purpose by the International Harvester Company, for the sole purpose of vending its products. The exact date when these five companies ceased, and the International Harvester Company entered upon the actual control of the business, does not clearly appear from the evidence, but it was some time in December, 1902, or January, 1903. In the meantime, negotiations had been entered into between certain officers and stockholders of that company and the owners of the capital stock of the D. M. Osborne Company, which in January, 1903, resulted in the purchase by those officers and stockholders of the capital stock of that company in the interest of the International Harvester Company and with its money and credit, to which all the property of that company was thereafter transferred and conveyed; the deeds therefor bearing date September 15th, 1905. During the seasons of 1903 and 1904 this company was managed and operated by its former officers, agents, and employees, and its business conducted as an independent company in the interest of the International Company until about the first of January, 1905, when its control and management was publicly assumed by the International Harvester Company. With the property of

this company the International Harvester Company acquired that of the Columbia Cordage Company, as in the beginning it had acquired that of the Mexican Sisal Company, and of the Illinois Northern Railway Company from the McCormick Company. The property of the former being a vast arid tract of land in New Mexico, and of the latter a railroad 2½ miles long in Illinois.

Some time in 1903 the International Harvester Company acquired control of the Aultman Miller ("Buckeye") Company, "The Minnie Company," and "The Keystone Company" manufacturers of harvesting machines by those names, and in 1905 the properties of these companies were transferred and conveyed to the International Harvestor Company. In the meantime they were operated and their business conducted for two seasons in the interest of the International Company as independent companies. In 1904 the International Harvester Company acquired control of the "Weber Wagon Company" and in 1905 the property of that company was transferred and conveyed to the International Harvester Company about which time the International also acquired the patents of the "Bettendorf Axle Company" and in 1906 the property of the "Kemp Company," a manufacturer of manure spreaders. Besides all the foregoing properties the International Harvester Company acquired and is the owner of the capital stock of "The Wisconsin Steel Company," and "The Wisconsin Lumber Company," a plant in Canada, and one in Sweden, the value of all its assets December 31st, 1907, according to its report of that date, being $156,282,454.16.

In addition to its foreign trade its gross sales in the United States in the year 1903 to 1907, inclusive, approximated the sum of $191,600,000, and in the State of Missouri to probably more than $8,000,000. Its net profit for those years was $34,706,307.48.

On the 8th of January, 1908, the capital stock of the company by amendment of its charter, was changed making one-half common, and one-half seven per cent cumulative preferred stock.

Among the valuable assets acquired by the company were the trade names of the several harvesting machines. The manufacture of these machines was continued as before at the same plants with the same names, except that the manufacture of the "Buck Eye," "The Keystone," and "The Minnie" was discontinued. "The Plano" was thereafter manufactured at the Deering and "The Milwaukee" at the McCormick Works and the plants of these machines devoted to the manufacture of other agricultural implements. The machines continued to be marked, catalogued, and sold respectively as "The McCormick," "The Deering," "The Champion," "The Plano," "The Osborne," and "The Milwaukee," and these together with all the other manufactured products of the International Harvester Company have since been sold exclusively by, through, and in the name of the respondent company reorganized for that purpose as aforesaid and all the net profits of the business have gone into the treasury of the International Harvester Company.

In the beginning the principal line of the business of the International Harvester Company was the manufacture of harvesters or binders and mowers, of different sizes, and rakes and twine, as it had been of its predecessors, but from year to year other agricultural implements, machines, and tools were added until its manufactures included a large number and a great variety of them, bringing it into competition with a great number of manufacturers of such other implements, machines, and tools. Its sales in Missouri during the years 1903–1908, found at page 318 of the printed record, discloses that in 1903 the company, exclusive of what it manufactured and sold through D. M. Osborne & Company, manufactured and sold only the following machines and implements, and in the following numbers in Missouri: Grain binders, 5,184; mowers, 10,208; rakes, 6,073; headers and push harvesters, 66; corn harvesters and binders, 126; corn huskers and shredders, 31; corn shockers, 18; reapers, 56; and knife grinders, 1,146, its principal line being grain binders, mowers, and rakes.

In 1904 they added tedders, of which they sold 19; hay balers, of which they sold 1, and gasoline engines, of which they sold 5.

In 1905 they added manure spreaders, of which they sold 59; disc harrows, selling 414; spring-tooth harrows, selling 114; cultivators, selling 80; and wagons, selling 865.

In 1906 they added to their list hay loaders, selling 50; side delivery rakes, selling 8; cream separators, selling 10; corn shellers, selling 195; horse powers, selling 4; and feed grinders, selling 15.

In 1907 they added corn pickers, of which they sold 8, and threshers, selling 4, and in 1908 they added farmers' automobiles, of which they sold 45.

During succeeding years their sales in many of these side lines increased, while in some they decreased, but throughout their operations grain binders, mowers, and rakes have continued to be the principal business, others being ancillary.

It is claimed in the answer that respondent has not at any time controlled and does not now control more than thirty per cent of the business of selling agricultural implements, tools, and machinery in the State of Missouri. This is probably true, and

while it is impossible from the evidence to determine satisfactorily what proportion of the whole business is done by the respondent, I find that in harvesting machines proper, that is to say, harvesters or binders, about 90 per cent, and in mowers about 75 per cent is done by the respondent, and that it is a strong competitor in most of the other lines in which it deals.

None of the sales of the products of the International Harvester Company are made by the respondent directly to the farmer, but through carefully selected retail dealers in each locality, under written contracts and schedules called commission agency contracts. These contracts are entered into on behalf of the respondent by general agents having control of a large territory with the local dealers, and in the contracts the territory of the dealer is specified in general terms, as for instance, "Jefferson City and trade tributary or vicinity." These contracts for the years 1903, 1904, and 1905 were in the following form:

COMMISSION AGENCY CONTRACT.

International Harvester Company of America, a corporation having offices in Chicago, Illinois, hereinafter designated "company," and ——— of ——— in the county of ——— and State of ——— hereinafter designated "agent" agree and contract this ——— day of ———, A. D. 19—, as follows:

Said company hereby appoints said ——— its sales agent under the limitations and restrictions herein specified for the sale of its ——— line of grain, corn, and grass harvesting machinery, more particularly enumerated in schedule referred to in article 10th of this contract, together with repairs for same, in the following described territory, to wit:

——————— and no other during the season ending December 31st, 1905.

Said agent accepts such agency and in consideration thereof, and for the commission herein agreed to be paid, expressly agrees as follows:

1st. To receive all goods shipped under this agreement, to pay freight on the same from Chicago, keep the same well housed and in good condition, and to make good any damage resulting from the improper handling or storage of same until sold or reshipped; to keep the same free from all charge and expense to said company, including all taxes which may be assessed on such goods carried over in said agent's possession from the preceding year. To collect from the purchaser the freight on all goods sold or assume the loss of same, and in no case to charge said company with any sum or sums for freight, handling, storage, or other expenses, except provided that in case said company shall remove or transfer any goods received under this contract, said agent shall be entitled to the actual freight paid when the goods were received; said agent shall send promptly at the time of shipment to International Harvester Company of America, at ——— a duplicate shipping receipt for each shipment made.

2nd. To diligently and thoroughly canvass said territory and in all reasonable and proper ways promote the trade and interests of said company, and do all business pertaining to the sale of said machines, attachments, and repairs; and to be governed by the printed instructions on the back of this contract which are hereby made a part of the conditions hereof.

3rd. To deliver, set up and fairly start every machine sold, and to instruct the purchaser how to adjust it to work in different kinds and conditions of crops. To pay all livery expenses that may be incurred by experts or canvassers furnished by said company while assisting said agent.

4th. To sell to good and responsible parties only, and to draw all notes, taken on sales to the order of International Harvester Company of America, upon blanks furnished by said company for that purpose; said notes to bear interest at the rate prescribed in said schedule of prices and terms. Notes taken by said agent on any other terms than those prescribed by said company shall at the company's option, be applied in payment of said agent's commission.

5th. To sell all machines or property received under this contract at such prices and on such terms as may be fixed in writing by said company or its general agent, in the territory herein mentioned.

6th. To settle with the purchaser for each machine or other article sold hereunder, either by cash or note, at the time of delivery, and in case said agent shall deliver any machine or other property mentioned herein for use in the field, or permit the use of any thereof before it is fully settled for by cash or good and collectible note, said agent shall account for and pay to said company on demand the full price of the same, together with interest thereon from October 1st, 1905, and also all costs and expenses incurred on account of same, and without any claim for commissions from or under any warranty by said company.

7th. To take a signed order from each purchaser, on blanks furnished by said company, and to use or give no warranty on any such machines, other than the regular warranty which is incorporated in machine order blanks for goods furnished by said company.

8th. To order all attachments and repairs for these machines from said company, or its general agent, and provide suitable storage therefor; and to sell the same for cash only and to remit the proceeds to said company or its general agent. Inasmuch as the reputation of the company's machines is injured by the use of ill-fitting parts made of poor material, by persons not interested in the manufacture of machines said agent agrees to handle none of such repair parts, but agrees to obtain all repair parts for use on the company's machines from said company.

9th. To furnish said company, or its said general agent whenever called upon, a full and detailed account of all sales made under this contract, on such blank forms as shall be furnished by said company or its said general agent for that purpose, and to make a full and complete settlement whenever called upon by said company or its said general agent.

10th. Said company agrees to pay said agent as commission on machines and attachments sold, an amount equal to the excess in the total proceeds received from sales of said machines and attachments (as shall be shown by account sales) over and above what said machines and attachments amount to at the net prices named to agent in separate schedule of net prices and terms, issued or to be issued by said company for the season of 1905 under this contract.

11th. All sales of machines on which said company receives all cash on or before the dates mentioned in said schedule of prices and terms will be accepted as cash sales, and all machines that are not settled for in full with cash on or before said dates will be settled for at time prices.

12th. No commissions will be paid on attachments sold or furnished gratis with machines.

13th. Commissions shall only be paid on machines sold and settled for, and none shall be paid on machines returned, condemned, or on orders not filled; and in case sales are made to parties who are discovered or adjudged by said company, or its general agent, to have been doubtful or worthless at the time of sale, the notes taken for such sales shall be received by said agent to apply on payment of commissions due upon sales recognized and approved by said company, and if the machine account at time of settlement is overpaid by notes, such surplus notes shall be received by said agent as payment in full or in part of commissions due.

14th. Notes given in accordance with the terms of this contract by purchasers of machines, which are found to be good and collectible, shall be accepted at the time of settlement. Notes not in accordance with the terms of this contract shall be replaced by said agent, upon demand, with cash or other notes acceptable to said company.

15th. Said company reserves the right to hold as collateral security for the payment of said agent's indebtedness to said company any purchasers' notes received by said agent on account of sales of said company's property, offered by said agent in settlement but not finally accepted by said company.

16th. Said agent shall receive as commission on sales of repairs twenty-five per cent of the list price thereof, as fixed by said company's price list of repairs for these machines for the current year, and said agent agrees to pay freight or express on same from general agency or transfer point.

17th. It is further expressly agreed that said agent is to receive, in the capacity of agent of said company and not otherwise, all goods, shipped under this contract, and all moneys, property, or other securities taken in payment for machines, attachments, and repairs, or other property sold by said agent for said company.

18th. Said agent further agrees under this contract not to retain, on account of commission or any other claim against said company, any moneys, notes, or other property received from the sales of any articles hereunder or from collection on notes or accounts, but to promptly remit all moneys, notes, or other property to said company or its said general agent, leaving commissions and all other claims to be adjusted at settlement.

19th. Said agent is strictly forbidden to take any part from any machine for the purpose of supplying customers with repairs.

20th. It is mutually agreed that said company shall at all times have exclusive and entire control over all machines and attachments and all orders, contracts, accounts, notes, moneys, or other property accruing and growing out of the sale of said machines, attachments, stackers, sweep rakes, hay rakes, hay tedders, twine, repairs, or other property, whether for this or previous years, and may at any time, when it considers its interests are neglected or jeopardized, without notice annul and terminate this and all prior contracts, and take possession of all orders, notes, accounts, moneys, machines, attachments, stackers, sweep rakes, hay rakes, hay tedders, twine, and any

other property in the possession or under the control of said agent by virtue thereof; and said agent hereby waives all r ght of action for damages because of such cancellation of contract and termination of agency.

21st. Said company agrees to use its best effort to complete and ship all machines ordered, and to supply all attachments and repairs ordered under this contract so long as its stock shall last, but shall not be held responsible to said agent for any damages in case the demand for either of said machines, attachments, or repairs shall exceed the supply whether growing out of interruption by fire or other elements, riot, labor disturbances, delay in transportation, or any other cause whatsoever.

22nd. Said agent especially agrees not to accept the agency for or to be interested in the sale of any grain binder, header, corn binder, husker and shredder, reaper, mower, stacker, sweep rake, hay rake, or hay tedder, other than those manufactured by the International Harvester Company, either directly or indirectly, nor to permit any one acting for him as an employe, agent, or partner, so to do while acting as agent for the said company under this contract, and said agent agrees to pay said company, on demand, as liquidated damages, twenty-five dollars for each grain binder, header, or corn binder; fifty dollars for each husker and shredder; ten dollars for each mower, reaper, or stacker; five dollars for each sweep rake, hay rake, or hay tedder sold in violation of this paragraph of this contract.

23rd. Said agent hereby represents that he is solvent and responsible, and this contract is entered into by said company upon the faith of such representation.

24th. It is further agreed that this contract shall in no case be valid and binding upon said company, of the first part, until the same shall have been appr oved by the general agent, and also that it cannot be subsequently changed in any of its provisions in any manner, either verbally or otherwise, by any person without the written approval of the said general agent.

INTERNATIONAL HARVESTER COMPANY OF AMERICA. [Seal.]

Approved at——— 19—.

INTERNATIONAL HARVESTER COMPANY OF AMERICA.

By ——— *General Agent.*

By ——— *Traveling Agent.*

——— [Seal.]

——— [Seal.]

INSTRUCTIONS.

The following instructions to agents are made a part of the within contract:

1st. We furnish you a reasonable amount of printed matter free of charge, delivered at the express office at Chicago, you to pay express charges on the same. We will not pay for newspaper or other advertisements unauthorized by us, neither will we pay for any printing of any kind whatever, except that furnished by us from our office.

2nd. We will not pay any charges for telegraphing, except for answers to messages sent by us, or unless it be in reference to parts short on machines shipped by us, or a similar case in which we are entirely at fault; and in such cases dispatches may be sent to us C. O. D.

3rd. Our canvassers are sent to assist you and are not invested with authority to change prices or terms; consequently at time of settlement, we shall consider their acts, so far as all matters affecting your contract with us, as having been done by your direction and approval.

4th. You must give every purchaser one of our printed warranties with each machine you sell.

5th. Should any part of machines shipped you prove defective from flaws, poor material, or bad workmanship, said defective parts may be charged back to us, but in all such cases the broken or defective parts must be exhibited at settlement to the authorized agent of said company, who shall return them to the general agent. A complete list of all parts given free must be kept on blanks furnished by us for that purpose, this list at settlement to be subject to the approval of the general agent herein of this company, and only such parts will be allowed as are approved.

6th. We do not agree to furnish repairs gratis after the first season, and then only such parts as are needed to replace those that have proved to be defective.

7th. Knives, sickles, sections, canvases, reel boards, reel arms, neck yokes, singletrees, and tongues are not warranted as they are always liable to be broken or damaged by improper usage and must never be given free.

8th. You must sell all extras at current list prices and for cash only, and in no case to charge the purchaser more than the list price unless the part or parts are ordered by express especially for him.

9th. You must sell only to the retail trade, and must not, directly or indirectly, sell or offer for sale any machines to parties outside of the within-named territory, under penalty of forfeiture of all commissions to the agent in whose territory the purchaser resides; but in no case is the said International Harvester Company of America to be liable for any trespass by one agent upon the rights of another except as said company, at its option, may first collect the same from said other agent.

10th. You must not exhibit or furnish any machines received under this contract, for exhibition at any fair, without the consent of said company or its aforesaid general agent.

11th. All men in the employ of this company are furnished money sufficient to defray their expenses, and we will not be responsible for any money you may advance to them.

INTERNATIONAL HARVESTER COMPANY OF AMERICA.

Thereafter the contracts were in substantially the same form except that in those for the year 1906, and subsequent years the fifth paragraph requiring the agent to sell all machines or property received under his contract at such prices as may be fixed in writing by respondent in his territory and the 22nd paragraph referred to in the pleadings and evidence as "the exclusive clause" were eliminated.

In making these contracts the agent was permitted to select either "The McCormick" "The Deering," "The Champion," "The Plano," The Osborne," or "The Milwaukee" machines, but was generally confined to one line. His commission on the machines and attachments was practically whatever he could get for them above the net price named *to him* in a separate schedule, which was the same for each of the six kinds; on repairs sold he was allowed twenty-five (and later 30) per cent on the list price at which they were to be sold *by him*. These prices were fixed from year to year and never varied from in the settlement of the agent's account.

In the harvesting machine business the sales of the independent competing companies prior to the organization of the International Company were from an early period conducted by and through commission agents to whom the machines were scheduled at a certain price, at which they were to be sold, but as a result of the competition between them, these prices were frequently reduced as the exigencies of the case seemed to require in order to effect a sale to the farmer, and the agent was allowed his commissions on the price for which he actually sold, and for which he was only required to account. This cutting of prices was the root of the manifold evils of which the manufacturers complained and for which a remedy was sought and found in the organization of the International Harvester Company. Its fruits, however, from the standpoint of the farmer might not have been regarded as unmixed evil, since during those years he found the prices of these machines continually decreasing and that for a six-foot binder for which in 1879 he had to pay $340.00, in 1881—$275; in 1885—$240; in 1892—$140; he could in 1902 have bought for $125, and for a mower for which he had to pay $90 in 1878 he could in 1902 have bought for $40. The prices at which these machines were scheduled by the respondent to its agents, the retail dealers, in 1903 were about the same as those of the independent competing companies for the preceding season, and these prices were continued until the year 1908, when the price of the harvester or binder for that season was raised from $100 to $107.50 with an extra charge of $3 for the transport truck, making an increase thereon of $10.50. For cash a discount of five per cent and two per cent on the price except for that of the transport truck was allowed, making cash price $100.08—truck $3, or $103.08, while in 1902 the cash price on binder and truck was only $95 making an increase of $8.08; at the same time a corresponding increase was made in the price of mowers. During these years, say from 1902 to 1908, inclusive, the price of labor and material and of all other agricultural implements was gradually increasing until the average per cent of increase on all other agricultural implements was quite as large and on many implements larger than the increase made by respondent for the year 1908 on its machines; the difference being that the increase in other agricultural machines and implements was gradual from year to year and that on harvesters or binders and mowers was made all at one time for the season of 1908.

It does not appear from the evidence that the respondent under the fifth paragraph of the contracts aforesaid ever fixed the prices at which its machines were to be sold to the farmer, and it does appear that there was a lively competition between the agents to make sales, and that the competition sometimes resulted in cutting the price fixed by the retailer as his selling price which in the main corresponded with the general selling price of other agents in the community. This cutting was exceptional, however, and necessarily within very narrow limits since the agent had to account to respondent for the price fixed by it in his schedule whatever price he might have sold for, so that whatever cut he might make would come out of his commission and

would in no way diminish the profit of the respondent whose prices to him were never cut.

The respondent, however, discouraged the practice and through its representatives recommended the maintenance of uniformity of prices.

It does not appear from the evidence that the respondent ever enforced the 22nd paragraph of the contracts aforesaid by exacting the penalties therein provided for. But it does appear that after that paragraph had been eliminated from the contracts that in two instances the agency was taken away from the dealer because he had taken an independent machine. One instance in which a renewal was refused because the agent had contracted for an independent machine, and three instances in which revocation of their agencies or other trade evils were threatened if the agents took independent machines, generally, however, both before and after the elimination of this paragraph from the contracts the respondent agents when so inclined handled machines and agricultural implements other than those of the respondent, and sold its products to customers wherever found without much regard to territorial limitation and without objection or interference upon the part of the respondent.

The respondent having fixed the price for which the retail dealer must account to it for each machine and implement sold, it was a matter of no interest to it, where, to whom, or for what price the same was sold.

None of the machines and agricultural implements manufactured by the International Harvester Company and sold by the respondent are manufactured in Missouri. The basic patents on the several harvesting machines manufactured and sold by them had all expired prior to the year 1903. But minor improvements are continually being made and the machines to-day are better, more simple and durable than they ever were. The facilities for obtaining repairs have also been improved and the insurance on the goods in the hands of the local dealer formerly borne by them is now carried by the respondent.

In every city, town, village, and hamlet in the State where there is a demand, respondent's machines and agricultural implements are handled and sold by one or more retail dealers under contracts similar to the one hereinbefore set out. The price of each brand of harvesting machines is the same as the others, the same to all retail dealers with whom they contract and to whom only they are furnished by the respondent by whom the prices are fixed for each season, and when fixed and scheduled to the dealer the prices are never varied from.

The respondent's only business is to sell the International Harvester Company's products, and if at any time they furnish the products of any other manufacturers it is simply an incident of that business, and as an aid thereto.

The International Harvester Company's products are sold to and by the respondent only and for that purpose only does it exist. This corporation and its stockholders once had capital, now it has none, everything that it or its stockholders once had now belongs to the International Harvester Company, and while the latter furnishes a board of directors and officers for it, makes paper contracts, and keeps accounts with it as though it were a real corporation and had some interests of its own, these contracts in reality are mere paper contracts of this International Harvester Company with itself, a mere system of bookkeeping by which the appearance of a separate corporate entity for the respondent is maintained by the International Harvester Company for the purpose of securing an entrance for its business into the State of Missouri, and other States where it could not enter "in *propria persona*" by reason of its enormous capital.

The respondent in truth and in fact is a mere sales department of the International Harvester Company, its existence as a separate corporate entity is a mere fiction to evade the laws of this and other States whose policy is not to encourage such a vast accumulation of wealth and power in the hands of a few as may endanger the welfare and prosperity of the many, whose policy is to keep open the field of commercial and industrial enterprise, as far as may be to all its citizens.

The negotiations which led up to and resulted in the agreement for and the organization of the International Harvester Company and the combination of all the property and interests of these five companies in that corporation were conducted and concluded by George W. Perkins of the firm of J. P. Morgan & Company representing that company and the respondent; Cyrus H. McCormick, president of the McCormick Harvester Company; Charles Deering, a member of the firm of The Deering Company; William H. Jones, vice president of the Plano Company; and John J. Glessner, vice president of the Warder, Bushnell & Glessner Company whose acts in that behalf were thereafter sanctioned and approved by the stockholders of those companies and the partners of Mr. Deering. All of these gentlemen except Mr. Deering voluntarily appeared and freely testified in the case at the request of the Attorney General. Their evidence fully set out in the transcript and printed abstracts is analyzed and also

discussed in the briefs of counsel and this process need not be repeated here. They are all gentlemen of marked intelligence and ability, a finance expert and four captains of industry, who fully understand the business in hand and the means by which their purposes were to be accomplished. Mr. Perkins, the efficient agent and mouthpiece of each, by separate negotiations with each, brought on the agreement of the 28th of July, 1902, manifested by the separate contract on that day formally signed at the same time and place and in the presence of each other. While there was no formal agreement *inter sese* in writing or otherwise, the tacit agreement is as apparent upon the face of their proceedings as if in black and white. The agreement took the form of a sale by each company of all its property through an individual to a corporation to be thereafter organized in which all the property and interests of these five competing companies were to be vested, combined, and controlled by them for their mutual profit. The trade evils against which these gentlemen bitterly inveigh were simply the concomitants and consequences of the competition which existed between these companies and while expansion was also a result contemplated as evidenced by their enlisting some outside capital, the prime object and motive obvious on their own evidence and all the facts and circumstances was the elimination of the existing competition between themselves, and such other competition as might be brought into the combine, and thereby secure control of the market in their products. The organization of the International Harvester Company by these independent competing companies was intended to and did stifle competition to that extent.

The character of the combination was not changed by the fact that the representative of the respondent, Mr. Perkins, owing to his connection with great financial interests, was enabled to and did enlist additional capital in the enterprise to more effectually carry out the purposes of the project. The purposes were those of the corporations who contributed five-sixths of the capital for carrying them out and retained control for that purpose.

At the time the International Harvester Company was incorporated and the respondent was licensed to do business in this State, said company by reason of the large amount of its capital stock could not have been organized or licensed to do business in this State (R. S. 1899, secs. 1316 & 1320), and the respondent has been maintained by it as a corporate entity for the reason that certain States wholly excluded from doing business therein corporations having so large a capital stock, and other States imposed a license fee based upon the total amount of the capital stock and not on the amount of capital invested within the State.

FINDINGS OF LAW.

The gravamen of the charge contained in the information is that the International Harvester Company is a pool, trust, agreement, combination, and arrangement created and organized by the respondent and its competitors in the manufacture and sale of agricultural tools, implements, and machinery for the purpose of restraining trade, lessening competition, regulating, controlling and fixing the prices and limiting and fixing the output of agricultural implements, tools, and machinery sold and offered for sale in Missouri and that such has been the effect thereof.

That in furtherance of such purpose the respondent has been maintained by the International Harvester Company as a corporate entity for the sole purpose of making sales of all its products, and that for the purpose of preventing competition and giving said company a monopoly of said business the respondent has compelled its retail dealers in each county of the State to handle and sell only the products of said company and to refrain from handling and selling the products of any competitor thereof. That by reason of respondent's participation in such pool, trust, combination, and agreement it has been guilty of a wilful and malicious perversion and abuse of the franchises, privileges, license, and authority granted to it by the State of Missouri and of the usurpation of privileges not granted.

Wherefore relator prays that the respondent may be excluded from all corporate rights, privileges, and franchises enjoyed by it under the laws of Missouri, that its franchise, license, and certificate to do business in the State be forfeited, and that all or a portion of its property be confiscated or in lieu thereof a fine be imposed.

The law governing the case is contained in sections 8965, 8966, 8967, 8971, and 8978, Revised Statutes, 1899.

Under the provisions of this statute any corporation organized under the laws of another State licensed by, and doing business in, this State who creates, enters into, becomes a member of, or a party to any pool, trust, agreement, combination, confederation, or understanding, to lessen, or which tends to lessen full and free competition, to regulate, control, or fix the price, or to limit the output, or to place the management or control of such combination in the hands of trustees with intent to fix

the price, or limit the output of any article, product, or commodity of manufacture, mechanism, merchandise, or commerce is guilty of a violation of its provisions, and such a corporation is also guilty of a violation of its provisions if it enters into any contract, agreement, or understanding with any other corporation or person to deal in, sell, or offer for sale in this State any such article, product, or commodity, and not during the continuance thereof to deal in, sell, or offer for sale in this State any competing article, product, or commodity.

1st. The first contention of the Attorney General is that "The organization of the International Harvester Company was brought about to restrain competition and is illegal, its effect being not only to restrain competition but to create a monopoly," and in support of this contention a vast number of cases and authorities are cited and an able and exhaustive brief filed.

As a result of the many adjudications on this and similar statutes the general law on the subject is thus stated in the last edition of a standard work on corporations:

"The law is clear that any combination of competing concerns for the purpose of controlling prices, or limiting production or suppressing competition, is contrary to public policy and is void. This principle of law has been applied with great rigor to some of the trusts. The two leading cases on the subject are the Sugar Trust decision in New York and the Standard Oil Trust decision in Ohio. Many cases showing the different circumstances under which this rule has been applied are given in the notes below, arranged in the alphabetical order of the various States.

These cases indicate the complicated questions and important litigation that have arisen by reason of the trusts. During the past six years the volume of such litigation in the State courts has decreased, but has rapidly increased in the Federal courts, in applying the antitrust act of Congress of July 2, 1890. Most of the great trusts have been driven from their original mode of organization and have reorganized by conveying all their property to a corporation organized for the purpose of taking over the property. Such has been the case with the Sugar Trust, The Standard Oil Trust, and the Cottonseed Oil Trust. The decisions of the New York Court of Appeals against the Sugar Trust, and of the Supreme Court of Ohio against the Standard Oil Trust convinced the trusts that their original mode of organization was illegal and must be abandoned. The result has been that the trusts for the most part reorganized and reappeared in the form of gigantic corporations. 2 Cook on Corporations, par. 503 (a) 1 c. pp. 1330-1338. In a note the author cites cases from this and 23 other States.

The International Harvester Company was organized by the respondent and four other competing corporations conveying all their property to a corporation organized for the purpose of controlling prices and suppressing competition. It was a combination for that purpose for the reason that the effect of the organization was to stifle competition between the competing corporations who were parties thereto one of which was the respondent, and tending to suppress competition by putting into a gigantic corporation the power to suppress competition between such corporation and other competitors. In the language of our statute a combination "made with a view to lessen, or which tends to lessen full and free competition," is obnoxious to its provisions; such a combination restrains trade and tends to create a monopoly, as said in an able and exhaustive opinion citing a host of authorities:

"To say that a combination restrains trade and prevents competition is a repetition of the same idea, the giving of two names to the same thing. Whatever restrains trade prevents competition, and whatever prevents competition in trade necessarily restrains trade. The word 'monopoly' which plays so great a part in the law, conveys the same idea, because where there is monopoly there can be no competition. Production, and hence prices, are under the control of the monopolist, to the possible and probable injury of the public. Freedom of trade requires competition. Without one the other can not exist, and whatever restrains the one restricts the other. It is true that unrestrained and unregulated competition may destroy what it is designed to preserve; but the theory of law and legislation still is that the welfare of the public requires that competition in trade and commerce shall exist, in order that freedom of trade may be maintained. * * * Where the statute prohibits a specific thing, that fact, of course, furnishes an all-sufficient reason for the decision, and, as the State statutes generally go more into detail than the Federal statutes, the State decisions are less controlled by general considerations. When the legality of the particular act is to be tested by whether it violates general statutory prohibitions upon restraints of trade or commerce, the courts give various reasons for their conclusions. Different forms of expression are used; but, when reduced to the lowest terms, it seems that if any one thing may be said to be the test, it is the effect upon competition. Combinations are not *per se* illegal, any more than are contracts, agreements, and understandings generally; but, when the purpose of either is to destroy competition in trade or commerce, the particular transaction falls within the prohibitions of the antitrust statute.

The acts which are specifically forbidden by the statute are contrary to the public policy of the State because they are thus forbidden (*Stewart* v. *Erie & W. Transp. Co.*, 17 Minn., 348, and the effect upon competition furnished a reasonably accurate test for cases which arise under the general language of the statute. The definition of monopoly involves the same principle, and contracts and combinations which tend to create a monopoly are against public policy, and therefore illegal, because they deprive the community of the benefits of competition and thus place the power to control production or fix prices in the hands of a few persons." *State* v. *Duluth Board of Trade*, 107 Minn., 506; 1. o. 523 and 543.

The fact that our statute is specific and under it not only, combinations to regulate and fix prices or to limit production, but all combinations made with a view to lessen or which tend to lessen full and free competition are condemned, make it unnecessary to review the many cases cited in the briefs of counsel construing general terms in the Federal statutes and those of many of the States, at all times keeping in mind, however, that not all combinations which tend to, or the effect of which is to lessen competition are condemned, but only those combinations that are entered into for that purpose. It is the purpose that vitiates in the eye of our statute.

Respondent's first contention is "that the antitrust statutes of Missouri do not prohibit a person or corporation from purchasing the properties of rivals and thereby increasing the purchasers' trade, though this incidentally lessens trade" may be conceded. In the opinion of Fox, J., in *State* v. *Continental Tobacco Co.*, 177 Mo., 1, 1, c. 32 cited and quoted from in support of this proposition, it is said "The terms of this statute are not broad enough to prohibit one corporation in good faith in the legitimate pursuit of its business from purchasing the assets of another corporation." But that is not this case; there was no purchaser here in the pursuit of the legitimate business of these corporations. Lane was not in such pursuit, and was a mere conduit, a figurehead for the transaction. The Harvester Company was not in existence, but was to be called into existence for the purpose of assuming the rôle of ultimate purchaser upon the terms prescribed for it by the vendors, and, of course, was not in the pursuit of legitimate, or any business. A sale of necessity involves vendors on one side and vendees on the other who can negotiate and agree on terms. There is no such thing as a one-sided sale nor can there be a *bona fide* one where the vendors and vendees are practically one. It is vain, in the light of the facts, to attempt to disguise this combination as a sale in good faith. The form of a sale was adopted for the sole purpose of effecting a combination of the property and interests of these competitors in business. This and the other cases cited under this head are not in point. The consolidation statute cited in this connection gives no countenance to such a combination.

It is next contended that "The antitrust statutes clearly show upon their face that they are not designed to limit freedom of an individual or a corporation in dealing with their property so long as there is no concerted action to the injury of others." The injury to others contemplated by the statute and apparent upon its face is a combination which "lessens or tends to lessen competition, regulates or controls prices, or limits production." Of course such a combination could be created only by concert of action, and in this connection it is then contended that "there was no combination, agreement or understanding between the vendors whose properties were acquired by the New Jersey Company. Each of them acted independently of the others in the selling of its property. Each of the companies whose plants were purchased was free after such sale, if it so desired, to continue in the business. The mere lessening of the number of selling companies did not restrain trade or competition."

Such combination, agreement or understanding may be as conclusively proven by facts and circumstances as by direct written evidence. *State ex rel* v. *Firemen Fund Ins. Co.*, 152 Mo., 1. c. 40. While the separate written contracts executed on the 28th of July, 1902, by the five competing harvester companies present no evidence on their face of such an agreement, and were intended to present none. The fact that the terms of each were the same, that they were signed at the same time and place, in the presence of each other, by the representatives of each company after long previous negotiations with each of them by one of their number to bring about just such an agreement. That these representatives were shrewd, intelligent, business men, who knew precisely what their acts would accomplish, and what each desired to be accomplished, *i. e.*, the combination of all their properties in one gigantic corporation under their control, together with all the facts and circumstances leading up to and attendant upon the transaction, and the character of the transaction itself, furnish as satisfactory proof of the agreement as if the fact had been formally expressed in writing. It borders on irony to say that each of these companies after it parted with all its property, with its stock tied up, if not absolutely parted with, and without a cent of capital, could have entered into competition with this mighty corporation, it, jointly with its competitors, had created for their common interest, or would

attempt to do so. Each was as effectually restrained from doing so as if bound by contract in writing not to do so.

It is next contended that the methods which prevailed in the harvester trade prior to 1902 were not the competition which the antitrust statutes were enacted or designed to protect. It is sufficient to say in answer to this contention that our statute makes no discrimination between the methods of competition which it protects.

The next point: That "the magnitude of the business and the proportion of the trade secured do not bring a corporation within the prohibitions of the antitrust statutes" may be conceded. But these facts may well be taken into consideration in determining the purpose for which the combination was entered into. Of course, there was nothing in the charter of the New Jersey company or on the face of any of the written contracts under which it acquired the properties of the competing companies indicating a purpose to fix prices, restrain output, or stifle competition. So far as form is concerned, the International Harvester Company appears upon the scene as a purchaser of the properties of these competing companies, but the fact remains on the face of the whole transaction that these companies were simply selling their property to themselves in the form of that corporation in order to effect a combination that would stifle competition between themselves and give them power to further stifle competition between themselves and others. The Attorney General is not complaining of the methods by which the company was organized, but of the purpose for which it was organized, and in this connection it may be as well to state in answer to another of respondent's points that the placing of the stock of the New Jersey company in the hands of voting trustees is alleged in the replication only as an act in furtherance of the purposes of the combination, and if it has no significance in that respect it has none whatever, and the discussion of its lawfulness is unnecessary.

2. It is next contended by the relator that the "respondent has also violated the antitrust statute by entering into an agreement to buy from no company except the International Harvester Company and by entering into exclusive agency contracts with local dealers of the State requiring them to sell only in a limited territory and at prices arbitrarily fixed by it."

I fail to find from the evidence that the respondent ever entered into an agreement to buy from no company except the International Harvester Company. It would be a strained construction of the written contract between the respondent and that company to so hold—and while during the years 1903, 1904, and 1905, the respondent by the 5th paragraph of its contracts for those years with its commission agents required them to sell at such prices as might be fixed in writing by the respondent, and in a territory mentioned in the contract, the territory was always indefinite and I fail to find that the respondent during those years or at any time fixed the prices at which sales should be made by the local dealers in writing or otherwise. The prices which the respondent did fix and which were never varied from were the prices to the local dealers. This paragraph and the instructions in regard to territory while in the contracts was never enforced but wholly ignored both by the respondent and the local dealers, and may be dismissed from further consideration. It seems to have been inadvertently carried over from the former contracts of the companies when independent as respondent had no occasion for it after adopting the policy of fixing an unvarying price to the retail dealer for which he must account.

By the 22nd paragraph of the contracts of 1903, 1904, and 1905 respondent's agents were required not to accept the agency for or be interested in the sale of any grain binder, header, corn binder, husker and shredder, reaper, mower, stacker, sweep rake, hayrake, or hay tedder other than those manufactured by the International Harvester Company. This paragraph of the contracts was in violation of the second clause of section 8966, R. S., 1899. But as it appears from the evidence that this paragraph has not been in the contracts since 1905 and no instance of any attempt to enforce it was made during the period that it was in the contracts, the violation was purely technical. The few isolated and exceptional instances mentioned after this paragraph was eliminated from the contracts are too trivial and insignificant, in view of the general conduct of the respondent's business in this respect, to warrant a forfeiture of respondent's license on this account.

3. The relator's next contention is that "The secret arrangement by which the Osborne Company, the Minnie Company, The Aultman & Miller (Buckeye) Company, and the Keystone Company were acquired and operated during the three years following the organization of the International Harvester Company was itself illegal and alone sufficient to warrant a revocation of respondent's license." The fact is that these companies were operated ostensibly as independent companies for about two years after the International Harvester Company had acquired their properties as heretofore stated. They were acquired by purchase, and there was nothing illegal therein. That negotiations for their purchase was entered into at the time or soon after the organiza-

tion of the International Harvester Company and promptly consummated is only one of the many facts tending to show that the purpose of that organization was to stifle competition and get control of the trade in harvesting machines and agricultural implements. That they were permitted to be operated as independent companies for about two years after their acquisition by the International Harvester Company was the act of that company and not of the respondent and for which the respondent can not be held responsible. The International Harvester Company is not a party to this suit and there is no such issue in the pleadings.

4. The next contention of the relator is that the respondent has violated the fundamental law governing corporations by entering into a partnership. The relation that respondent sustains to the International Harvester Company has been heretofore stated and manifestly upon any theory founded upon the evidence is not that of partners.

5. The relator's next and last contention is that respondent's license should be revoked upon the ground "that it has ceased to perform the functions for which it was licensed, and is permitting itself to be used in evasion of the Missouri law which precludes the International Harvester Company from doing business in this State." The answer to this contention will be found in my conclusion on the whole case.

CONCLUSION.

I find that the International Harvester Company is a combination and arrangement created and organized by the respondent and its competitors in the manufacture and sale of agricultural implements, tools, and machinery for the purpose of restraining trade, lessening competition, regulating, controlling, and fixing the prices of agricultural implements, tools, and machinery sold and offered for sale in Missouri. That in furtherance of the purposes aforesaid the respondent has been and is maintained by the International Harvester Company as a separate corporate entity for the sole purpose of making sales of its products, and for that purpose the respondent obtained license to do business and make such sales in the State of Missouri, in evasion of its laws, which preclude the International Harvester Company from obtaining such license, and by means thereof has secured a practical monopoly in the sale of harvesters or binders, a near monopoly in mowers, and *power* to secure a further monopoly in the sale of agricultural tools, implements, and machinery in this State.

That respondent by becoming a member of and a party to such combination and arrangement, and in thus furthering the purposes thereof by the evasion aforesaid, has been guilty of a violation of the aforesaid sections of the statute law of this State and has incurred the penalty therefor prescribed in section 8971 of said statute, and that I fail to find in the evidence any other substantial ground upon which respondent's license, right, and privilege to do business in this State should be forfeited.

THEODORE BRACE, *Special Commissioner.*

In he Supreme Court of Missouri. Court in banc. October term, 1911, No. 14546.

STATE EX INFORMATIONE ATTORNEY GENERAL, E. W. MAJOR, RELATOR,

vs.

THE INTERNATIONAL HARVESTER COMPANY OF AMERICA, RESPONDENT.

JUDGMENT AND DECREE.

And now, on this day, this court having fully considered the evidence in this cause and announced and filed its opinion that the said respondent is guilty as charged in the information of the attorney general of a violation of section 10301, of chapter 98, of the Revised Statutes of Missouri for the year 1909, the same being the laws of Missouri for the year 1907, which said statutes relate to and are entitled, "Pools, trusts, conspiracies, and discriminations," and is and was likewise guilty of a violation of a previous statute of this State, section 8966 of article I, of chapter 143, of the Revised Statutes of Missouri for the year 1899, the same being the laws of Missouri for the year 1897, which statutes relate to and are entitled "Pools, trusts, and conspiracies," come now the State of Missouri, by Elliott W. Major, the attorney general of this State, and the said respondent by its counsel, and it is now here considered, ordered, and adjudged by the court that the said respondent is gullty of violating the said laws of this State, in that at the dates and times set forth in the information of the attorney

general, it maintained and had entered into an arrangement, contract, agreement, or understanding with other manufacturers of reapers, binders, mowers, and other farm implements, with a view to lessen competition in the sale of such products and commodities in this State, and at all the dates and times was a member of and participating in such an arrangement, contract, agreement, combination, or understanding in the sale of such products and commodities in this State, and by which said arrangement, contract, agreement, combination, or understanding competition in the sale of such products and commodities in this State at all the dates and times aforesaid was in fact lessened, decreased and in certain instances and places practically destroyed.

It is now considered, ordered, and adjudged by the court that by reason of the violation of the statutes of this State aforesaid, in entering into and maintaining said unlawful arrangement, contract, agreement, combination, or understanding, the said International Harvester Company of America, organized under the laws of Wisconsin, and heretofore licensed to do business in this State has forfeited its license heretofore granted it by the secretary of state of the State of Missouri, and it is therefore considered, ordered, and adjudged by the court that the license of the said International Harvester Company of America be and the same is hereby forfeited, annulled, and canceled, and the said respondent is hereby ousted of any and all rights and franchises granted it under the laws of this State, to further do business in this State, and it is further considered, ordered, and adjudged that the said International Harvester Company of America, organized under the laws of Wisconsin, as aforesaid, for the violation of the laws of this State as aforesaid be fined fifty thousand dollars and that it pay said sum of fifty thousand dollars to the clerk of this court on or before the 1st day of January, 1912, to be by said clerk paid into the treasury of this State, and upon default and failure so to do, that the State of Missouri have execution therefor, to be levied by the marshal of this court and enforced according to the laws of this State in such cases made and provided. But it is further considered, ordered, and adjudged by this court, that if the said International Harvester Company of America shall pay said fine to the clerk of this court on or before the 1st day of January, 1912, and shall immediately cease all connection with the International Harvester Company of the State of New Jersey, and the other corporations and copartnership mentioned in the opinion filed in this cause, in continuing and maintaining such unlawful arrangement, contract, agreement, combination, or understanding to lessen and destroy competition in the sale of binders, reapers, mowers, and other farm implements, and shall furnish the court with satisfactory evidence of its full compliance with this judgment and of its intention in good faith to cease all connection with the said International Harvester Company, organized under the laws of New Jersey, as well as the other corporations and copartnership, mentioned in the opinion of this court, and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this State and the license heretofore granted to it, then the judgment of ouster herein shall be and is suspended, and the writ of ouster herein will not issue until expressly directed by order of this court, and the said International Harvester Company of America is hereby given until the 1st day of March, 1912, to file the proofs of its willingness to comply with the judgment of this court, and until that date, in no event, will the writ of ouster be awarded. And it is further considered, ordered, and adjudged by the court that if it shall be shown to the satisfaction of this court hereafter, that notwithstanding the promises and assurances of the International Harvester Company of America to abide by this judgment, it has violated the conditions of this judgment, and has violated the statutes of this State aforesaid, the suspension of the writ of ouster shall be removed by this court, and absolute ouster be enforced as directed and adjudged herein, and to that end the court hereby retains its full and complete jurisdiction over this cause. It is further ordered and adjudged that the State of Missouri, at the relation of the attorney general, have and recover all its costs herein laid out, paid and expended, including the allowance which may be made to the special commissioner and the stenographer in taking and certifying the testimony herein and the fees of all witnesses and officers executing process of any and all kinds, as well as all other costs and expenses incurred in the prosecution of this action, and have execution therefor against the said respondent, the International Harvester Company of America.

In the Supreme Court of Missouri. Court in banc. October term, 1911, 14546.

STATE EX-INFORMATIONE ATTORNEY GENERAL, E. W. MAJOR, RELATOR,

vs.

THE INTERNATIONAL HARVESTER COMPANY OF AMERICA, RESPONDENT.

This is an original proceeding in this court on the information of the Attorney General, charging the respondent with violating the antitrust laws of this State. There is not much dispute about the essential facts in the case; the difference

between the parties consisting mainly in the contention on the part of the State that the acts that were done by the respondent and its associates were done for the purpose of suppressing competition and regulating prices, and the contention on the other hand that the acts were done for the purpose of bringing about a more rational and conservative method of conducting the business of manufacturing and selling agricultural implements within the legitimate bounds of the law and with no purpose of creating a monopoly or suppressing competition or regulating prices in the sense that those terms are used in the statutes.

The respondent is a Wisconsin corporation chartered in 1881 under the name Parker-Dennet Harvesting Machine Company, to engage in the business of manufacturing and selling harvesting machines; that is, binders, mowers, &c., and other agricultural implements. It was located at Milwaukee, Wisconsin, and conducted its manufacturing business there. Its name was afterwards changed to Milwaukee Harvesting Company, and under that name was licensed to do business in this State in 1892. It established itself here and conducted its business of selling its own manufactured articles until the occurrence of the events herein complained of by the State, since which time it has conducted a business of selling only the products of the International Harvester Company, a New Jersey corporation, which corporation will be hereinafter more particularly referred to and discussed. After the organization of he last-named corporation it acquired all the stock of respondent and respondent's name was again changed, the last name being the International Harvester Company of America, the words "of America" alone distinguishing its name from that of the New Jersey corporation. Respondent is frequently referred to in the evidence as the "Milwaukee," and for convenience and ready distinction we will sometimes refer to it by that name.

Besides the Milwaukee company there were other foreign corporations, manufacturers, and sellers of farm implements, the same or similar character, licensed to do business in this State, among them the McCormick Harvester Company, an Illinois corporation; the Plano-Manufacturing Company, also an Illinois corporation; the Warder-Bushnell and Glessner Company, an Ohio corporation; and the D. M. Osborne and Company, a New York corporation. In addition to the above corporations, the Deering Company, which was an Illinois copartnership, was also a manufacturer and seller of harvesting machines and doing business in this State. The manufacturing plants of all these concerns were located in their respective State domicils; the business they conducted here was that of selling their manufactured products. There were other concerns engaged in like business, but the six companies above named, including respondent, were the chief concerns, and in 1902 (which was the date of the alleged unlawful combination) and for several years prior thereto, they did from 80 to 90 per cent of all harvesting machine business in the United States and in the State of Missouri. The commissioner has listed these companies in the rank of the relative volume of business done by each as follows: (1) The McCormick, (2) the Deering, (3) the Warder-Bushnell & Glessner, (4) the Plano, (5) the Osborne, (6) the Milwaukee. The machines of each company bore the company's trade-mark for a name: "McCormick," "Deering," "Champion" (the Warder-Bushnell & Glessner), "Plano," "Osborne," and "Milwaukee," and well known to the trade by their respective trade-marks.

In 1902 and for several years prior thereto a very active, an unusually active, competition was practiced by these companies between themselves and others engaged in like business. The commissioner describes the competition as "active, persistent, strenuous, and fierce." Respondent describes it as "a bitter wasteful warfare, of a sort never known in any other business in the world." It also says: "Competition was not fair and businesslike, such as the law encourages, but a fierce conflict, causing the ruthless ruin of competitors," and no fair advantage to the farmer. To avoid the disasters with which that condition of the market seemed to threaten the companies engaged in the harvester machine business the International Harvester Company, the New Jersey corporation, was on August 12, 1902, created, and into it was merged all the properties and business of five of the companies above named, to wit, the McCormick, the Deering, the Warder-Bushnell & Glessner, the Plano, and the Milwaukee, and in January, 1903, the New Jersey corporation purchased all the stock of the Osborne Company, and thereupon all the property of that company was transferred to the New Jersey company. Thus in January, 1903, the New Jersey company had acquired the plants and properties of the companies that theretofore had manufactured and sold eighty or ninety per cent of all the harvesting machines in the United States, and to that extent it thereafter dominated the market. During 1903 it acquired control of the Altman-Miller Company, an Ohio corporation that manufactured and sold a harvesting machine called the "Buckeye," and it has since acquired the properties of other concerns engaged in manufacturing harvesting machines and other farm imple-

ments in the United States and properties outside the United States. The commissioner finds the value of all its assets to be on January 31, 1907, $156,282,454.16.

The New Jersey corporation is engaged in manufacturing all of the harvester machines above named and putting them on the market under their respective names, the McCormick, the Deering, the Champion, &c., and the respondent is its sole agent for putting its products on the market. The negotiations which ended in the organization of the New Jersey company were conducted by Mr. Perkins, of the banking house of J. P. Morgan & Company, and they were the result of his reflections on the situation of the harvester machine business prompted by a visit of Mr. McCormick to him in 1902. The object of Mr. McCormick's visit was to obtain money to extend the business of his company. He was fully conscious of the danger to his business threatened by the fierce competition of the other concerns who were his rivals; his was the strongest one of them all, but he wanted to gain more strength to enable him to compete with his rivals successfully. He did not at that time have any idea of forming a combination with his rivals to allay competition and control the market. His talk with Mr. Perkins was in furtherance of his purpose to obtain more money to extend his business, and there was nothing said between them at that time indicative of a purpose to form a combination. Having fully laid his purpose before Mr. Perkins the latter took time to consider it, and they parted with the understanding that they would meet again. Mr. Perkins's reflection led him to the conclusion that the conditions were favorable for the introduction into the field of a great corporation to engage in manufacturing harvester machines and other agricultural implements. With this idea in his mind when they met again Mr. Perkins proposed to Mr. McCormick to purchase his plant. The matter was fully discussed and the proposition was agreeable. Mr. McCormick was willing to sell and Mr. Perkins to buy at a price to be agreed on based on a fair valuation of the property and business. Mr. Perkins had in mind then the purchase of other concerns and was negotiating with them and Mr. McCormick knew that fact. During these negotiations Mr. Perkins bought for J. P. Morgan & Company all the assets of the Milwaukee company and paid for them in cash. That seems to have been an outright purchase, not dependent in any degree on the consummation of the negotiations looking to the purchase of the assets of the other companies. Mr. Perkins testified that he would have bought the McCormick Company, even if he could not have obtained the others. He testified that after talking with McCormick he negotiated with the managers of the other companies, trading with each separately. "After finding out what I could buy the companies for, I tried to pay them in the best coin I had to deliver, and they agreed to take stock in the new company in payment." Except with the Milwaukee company there was no concluded contract of purchase, but only an agreeable understanding until July 28th, 1902, when the respective representatives of all these companies met around a table in New York and each one then and there signed the contract for the sale of the assets of the company he represented. Up to that time there was never a meeting of the representatives of those companies to discuss and agree upon the plan of organization. The negotiations were conducted by Mr. Perkins, or under his direction, with each company separately. He testified that he bought the property of each company just as he would buy a horse in the market. The evidence shows, however, that each company knew that like negotiations were going on with the other companies, and each agreed to take pay in stock in a company to be formed. At the date of the signing of the contracts the respective representatives of the companies had come to New York in relation to this business, but they had held no communication with each other; they came together for the first time when they signed the contracts; these contracts were all alike and were prepared and ready for signature when the parties met around the table.

It was not a joint contract, but each executed a separate one transferring to the trustee named all the property and rights of every description, including accounts and bills receivable, trade marks, trade-names, and good will of his company. And it was provided: "The purchase price to be paid by the purchaser to the vender for all and singular said property shall be the aggregate of the several appraisals and valuations hereinafter provided for and of said accounts and bills receivable and cash, if any, and shall be payable in full-paid, nonassessable shares of the capital stock of said purchasing company taken at par." The purchasing company referred to was the New Jersey corporation to be thereafter organized, the immediate transfers being to a trustee to hold until that organization. The acts of the representatives of the several corporations were duly sanctioned and approved by the stockholders of the respective companies, and by the partners in the Deering Company. The agreement to take pay in stock of the company to be formed applied to all the companies except the Warder-Bushnell & Glessner Company, the exception as to that company was made because it was discovered that part of its capital stock was owned by two estates, therefore the proportion belonging to those estates was to be paid in cash, the rest in stock.

All of the contracting companies parted with all their assets of every description and good will, leaving them only the shares of stock which were of no use or value. The next step was the organization of the International Harvester Company under the laws of New Jersey with a capital stock of $120,000,000.00, which was distributed as follows: J. P. Morgan & Company having paid for the property and stock of the Milwaukee Company $3,148,196.66, and their services and expenses in the organization being estimated at $3,451,803.34, they were awarded stock to the amount of $6,600,000.00; the tangible property of the McCormick, the Deering, the Warder-Bushnell & Glessner, and the Plano having been appraised at $53,400,000.00, and their guaranteed bills receivable and accounts at $40,000,000.00, stock to the amount of $93,400,000.00 was distributed to them, and the remaining stock to the amount of $20,000,000.00, was issued to individuals who subscribed for it.

After the organization of the New Jersey corporation all the other companies that had been absorbed by it ceased to do business and thereafter the business of manufacturing and selling harvester machines and other farm implements was conducted by the New Jersey corporation. But because some states would not admit into its borders a corporation of such large capital stock, and others imposed a license tax that the managers thought was unreasonable, it was decided that the corporation would limit its operations to manufacturing the machines and implements and would employ another concern which would not be objectionable to the laws of those States, to sell its products. For this purpose the managers of the New Jersey corporation turned their attention to the respondent in this case, then called the Milwaukee Harvester Company, the property of which the New Jersey corporation had already acquired, and the stock of which it also owned. The advantage of using this respondent also appeared by the fact that it was already licensed in the States where it was desired to go, and it could operate in those States as the selling agent of the New Jersey corporation under the licenses that it already had. The International Harvester Company (the New Jersey corporation) being then the owners of the stock of the respondent, the Milwaukee Company, caused the respondent's name to be changed to the International Harvester Company of America and chose its board of directors, and since then the respondent has been engaged exclusively in the business of selling the machines and implements manufactured by the New Jersey corporation.

Its mode of doing business was to appoint at different places in the State what is called a "sales agent" who was to conduct the business of selling the machines under certain specifications and limitations set out in an elaborate contract on a printed form. This contract for the first three years contained a clause requiring the agent to sell all the machines or property received by him under the contract at such prices and on such terms as might be fixed by respondent or its general agent, and also an agreement on the agent's part not to accept the agency of any other concern in like business; but those restrictions were eliminated from the contract used in 1906 and thereafter. Under the contract after those clauses were eliminated, the agent was required to pay the company a certain price for each machine sold, and whatever he might get in excess of that price was his commissions. The sliding of the price at which the agent might sell was within the margin of his own commissions, the price he was to pay the company was fixed. The evidence showed that there was a considerable competition in the trade after the absorption of the competing companies; some of the witnesses, who were agents, testified that there was as much competition after 1902, as there had been before that date. But the competition there spoken of was chiefly between the agents selling the different machines made by the New Jersey corporation, that is, an agent who had the selling of a "McCormick" would compete with one selling the "Deering," or the "Champion," or the "Buck-Eye," &c., and it was within the margin of the agent's commissions. And the evidence showed that there were three independent companies in the market competing with the agents of the respondent, and they did a good business. But as compared with the volume of business done by the respondent that done by the independent companies was small. In entering into the contract the agent was permitted to select either the "McCormick," the "Deering," the "Champion," the "Plano," the "Osborne," or the "Milwaukee," but was generally confined to one line.

The evidence also shows that the price of harvester machines was not materially higher after the New Jersey corporation entered the field than it was before, until 1908, when it was increased eight or ten per cent whilst in the meantime there had been a greater increase in the price of the material and labor used in their construction. The evidence also shows that whilst harvesting machines were the chief products of the companies absorbed by the International Harvester Company, that company has greatly enlarged its business and extended it to many other farm implements and has thus put itself im competition with the many concerns that theretofore were and

still are engaged in manufacturing such other farm implements and the farmers generally have profited thereby. The evidence also shows that the machines manufactured by the International company have been greatly improved in quality and the item of repair material has been reduced in price and placed within closer reach of the farmer. On the whole the evidence shows that the International Harvester Company has not used its power to oppress or injure the farmers, who are its customers.

I.

In 1902, when the negotiations which led up to the organization of the International Harvester Company were begun, competition between the large harvester machine companies in the United States was such as to reduce the market to a condition that was deplorable from the standpoint of the competing companies and it is not certain that its tendency was towards the ultimate advantage of the consumer of those machines. Whilst the tendency of fair competition is to produce a wholesome condition of the market, yet competition may be of such a character and so designed as to destroy the weaker competitors, leaving only the giant in the field, who then would have a monopoly of the market. The law is not interested alone in the consumer, but it has regard also for the producer and would it if could protect a small manufacturer or dealer from the destruction that the avarice of a powerful rival might design. Therefore the argument of the learned counsel for the respondent is not without force, that the competition that existed in 1902 in the harvester machine market was not the kind of competition that the lawmakers had in mind when they enacted the antitrust statutes. But unfortunately for that argument it is impossible for the legislature to prescribe a general rule by which competition conducive to a wholesome condition of the market can be distinguished from a competition that is demoralizing and disorganizing. In a later case (Standard Oil Co. *v.* U. S., 31 Sup. Ct. Reporter, 502) the Supreme Court of the United States held that the act of Congress which prohibits contract that had for its purpose a restraint of trade, but only such reason, and when so construed it did not forbid the making of every contract that had for its purpose a restraint of trade, but only such as had for its purpose an unreasonable restraint of trade; and, for an example, the court referred to contracts whereby a voluntary restraint would be put by an individual on his own right to carry on his trade or calling; contracts of which character were by the common law of England at one time held to be void, but the doctrine was afterwards modified so that it was only when a restraint by contract was so general as to be coterminous with the Kingdom that it was treated as void. Reading the whole opinion in that case we infer that when the court says a reasonable restraint of trade is not forbidden by the statute, it refers to the restraint which is placed on the trade by the terms of the contract or by the act in question. Under that decision as we understand it if a contract provides for a reasonable and lawful restraint of trade it is not forbidden by the statute, or if the act done is potential only of such a reasonable restraint it is not condemned. Under the rule there laid down if a contract in question or an act of combination is significant or potential only of a reasonable restraint of competition it is not within the condemnation of the statute. But when a contract or act of combination is to be upheld on the theory that it is only a reasonable restriction on trade, it must appear on the face of the contract or act that the restriction which it creates is limited within reasonable bounds. It will not avail one who attempts to defend a contract unlimited in its terms or act that is unlimited in the apparent scope of its power to say that it will be used only in a moderate degree. The law is jealous of an unlimited power in such case in whosesoever hands it may be placed. After laying down the rule of reasonable construction the court turned to the facts of that case and held that the acquisition of power by the Standard Oil Company betokened its unlawful purpose. The court said: "Because the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, in and of itself in the absence of countervailing circumstances, to say the least, to the prima facie presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce."

And again the court said: "So far as the decree held that the ownership of the stock of the New Jersey corporation constituted a combination in violation of the first section and an attempt to create a monopoly or to monopolize under the second section

and commanded the dissolution of the combination, the decree was clearly appropriate."

In the case at bar we are to take the acts of the parties and judge their purpose by the consequence that would naturally result. When men deliberately and intelligently go to work and acquire power that will enable them to control the market, if they choose to exercise it, there is no use for them to say that they did not intend to control the trade or limit competition, nor when the legality of their act of acquisition is in question is it any use for them to say we have not used the power to oppress any one. Counsel for respondent argue that the mere possession of power incident to the possession of wealth is not unlawful if it is not unlawfully exercised, and that is so. Wealth is power, and it may, without violation of law, be excerised to influence the market. The statute we are now considering is not designed to limit the amount of wealth one may lawfully acquire, therefore not designed to limit the influence that wealth may exert, but it is designed to forbid the acquisition of power for the purpose of influencing the market by combinations of interests that otherwise would compete in the market. The law regards such a power acquired by such a combination as dangerous to the rights of the people and forbids its acquisition. If immediately on the organization of the International Harvester Company and its appointing the respondent to act as its agent and before any of its products were put on the market an information in quo warranto had been presented in court against it it would have been no answer to the complaint for the respondent to say, true it is we have this power, but we are not going to use it to the injury of the farmers or of other dealers in the same kind of implements. Neither is it any defense, after operating under the power for a time, to say we have not up to this date used the power to injure anyone.

Doubtless it could have been well said in behalf of the Standard Oil Company in the case above cited that under its operation the price of coal oil had not been increased and that many products of petroleum other than illuminating oil, not before known or used, had been developed, and on the whole the public had been benefited, although in the acquirement of the power small producers and dealers may have been driven out of business and ceased to compete in the market.

So in the case at bar, the price of harvesting machines has not increased in proportion to the increased cost of construction or the increased merit of the machines, and respondent has bought other farm implements into trade, and it is also true that not all, though some of the smaller concerns that were competitors in the market, have ceased their struggle for existence and retired from the field.

There can be no doubt but that the competition that existed between the concerns that were engaged in manufacturing and selling harvester machines in 1902 was the moving cause of the organization of the International Harvester Company, and there can be no doubt but that that competition ceased when that corporation took charge of the business. The suppressing of that competition may not have been Mr. Perkins's purpose; he may have thought that he could organize a great corporation that could live and prosper in spite of competition. He bought the Milwaukee Company without waiting to see what he could do with others, and he said that he would have bought the McCormick even if he could not have bought the others. But we are not concerned with what he would have done; our attention is directed to what he did, and that was the buying of all these concerns and combining them in one corporation, with the result that the fierce competition that had existed ceased. He said that he bought the property of each of these companies just as he would buy a horse in the market. He was probably mistaken in that figure of speech. This transaction was conducted with great skill and ability and evidently with an eye on the antitrust statutes of this and other States, with the purpose of either avoiding or evading those statutes. Whilst the negotiations with each company were conducted separately, yet they were conducted with reference to the result of like negotiations with the other companies. No definite contract of purchase was concluded with either company, except the Milwaukee, until like contracts were made with the others, and the agreement to take pay in stock of the corporation to be formed showed that the managers of each company knew of what the corporation was to consist. The managers of these several corporations were men of conspicuous business intelligence; they would never have agreed to sell the property of their companies and take pay in stock of a corporation to be formed unless they knew of what that corporation was to consist. The fact that they did not all get together and agree to merge their companies in one, but on the contrary each conducted its part of the scheme in form as if it were simply making a sale of its property, shows that they were acting in fear of the antitrust statutes. And the fact that they did not all sign one contract, but each a separate one, shows caution to avoid the appearance of combination; yet when all the several contracts were signed the effect was the same

as if they had all signed one contract. And the fact that the representatives of the five companies were all in New York on that business at the same time but stopping at different hotels and holding no communication with each other again shows caution. If there had been no antitrust laws in the land and these gentlemen had all concluded, in order to suppress what they call this unbusinesslike and ruinous competition, to unite their interests in one great company (as in fact they did), the most natural thing for them to have done would have been to meet together and talk it over and agree on the details. In the case above cited the Supreme Court of the United States, commenting on the comprehensive terms of the antitrust act of Congress, which in that particular is like our statute, said: "That in view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation." And so we say under our statute the form of contract under which this combination was brought about can not save it from condemnation, and respondent can not escape the result by saying it was not designed to suppress reasonable competition, but only the ruinous and unbusinesslike methods that were then in practice, because there is no such limit in the power conferred.

We hold that the International Harvester Company, the New Jersey corporation, is an unlawful combination to suppress competition and regulate prices within the meaning of our statute, and therefore it has no right to do business in this State.

II.

The respondent the International Harvester Company of America, the Wisconsin corporation, is doing business in this State under a license issued to it by the secretary of state in 1892. At that time it was an independent corporation under the name of the Milwaukee Harvester Company, manufacturing and selling its own harvester machines. Of this corporation the commissioner says: "This corporation and its stockholders once had capital, now it has none; everything that it or its stockholders once had now belongs to the International Harvester Company. * * * The respondent in truth and in fact is a mere sales department of the International Harvester Company."

At the date of the organization of the International Harvester Company and at the time it began doing business in this State through the agency of the respondent it could not have obtained a license in its own name because at that time our law did not admit into the State a foreign corporation of such large capital, but since then our statute has been amended and the amount of the capital is now no objection. But the fact is the International Harvester Company began doing business in this State through the agency of the respondent at a time when, even if it was otherwise entitled, it could not have obtained a license in its own name. And although now the amount of its capital stock would not exclude it from the State yet the fact that it is an unlawful combination in the light of our antitrust statutes would exclude it. What a principal is forbidden to do in his own name he can not do through an agent. If a principal has no authority he can not confer authority on an agent.

There is another aspect in which the respondent appears. When the respondent obtained its license to do business in this State it was an independent corporation manufacturing and selling its own machines and it was for the purpose of selling its own product that the license was granted. It now has no business of its own, no property, no independent existence, it is in fact a mere sales department of the International Harvester Company, which company has never been licensed to do business in this State. We do not mean to say that the respondent while doing the business for which it was licensed in 1892 could not also, if its charter so provided, have acted as agent for some other concern and sold its goods, provided the other concern could have lawfully sold its own goods, but whether when the respondent committed a complete abandonment of the business for which it was licensed, had no longer any business of its own, it could take up a mere agency is a question worthy of consideration. But perhaps there is no use deciding that question, since we have already concluded that respondent's principal has not, and has never had, any right to do business in this State, therefore as its principal's agent respondent has no such right. The amount paid by respondent for the license issued to it in 1892 was $62.50, which was the minimum tax prescribed by the statute, and was estimated on the representation of the respondent at that time as to the proportion of its capital stock, which was $750,000.00, represented by its business in this State. The International Harvester Company, with a capital of $120,000,000.00, even if it was not otherwise excluded, could not lawfully use the license based on an estimate of the proportion of the capital

stock of another company which was less than a hundredth's part of its capital. If such were permitted, corporations with enormous capital would soon learn to organize or acquire smaller ones and send them into the State to do its business with a minimum fee.

III.

We have already said in effect that when a party is called into court to answer a charge of unlawful combination in restraint of trade, it is no defense to say that the power thus acquired has been or will be used with moderation. But after the court had adjudged the party guilty of the act charged and comes to consider the penalty to be adjudged, the past conduct of the party in the exercise of its power is a fact worthy of consideration. Our antitrust statute says that if the party found guilty of the act forbidden is a domestic corporation its charter shall be adjudged forfeited, and if it is a foreign corporation its right to do business in this State shall be adjudged forfeited. Besides the statute we have the common law on the subject of combinations in restraint of trade and the penalties under that law; in this respect the State courts have a jurisdiction that the Federal courts, who have no common-law jurisdiction, do not have.

In determining the penalty to be adjudged in a case of this kind the court should have regard to the consequence to follow its decision. It would be an injury to the people of this State to forbid the International Harvester Company to do business here, therefore, whilst we must obey the mandate of the statute and pronounce a judgment of ouster, yet we may suspend the execution of the judgment, as this court in some cases has sometimes done, on terms that would be fair to the corporation and condusive to the welfare of the people of the State.

One of the evils intended to be guarded against by the law is the enhancing of prices to the injury of the consumer, but that is not the only evil that may be done by a great power in the market, the driving of small competitors out of the trade is a wrong that the law would prohibit. This is not a paternal government and the State does not undertake to deprive one of the advantage his greater wealth gives him in the market over one of smaller means, but it does undertake to prevent a combination of interests to drive others out of the market. If the International Harvester Company were disposed to exercise the power its enormous wealth gives, and if it were left unrestrained to do so, it could drive every competitor it now has from the field. In considering what restraints the court in this case, in that respect, should impose, we experience difficulty. A company of so much strength has the power to temporarily reduce the price of its goods to such a degree as that all competitors would be compelled to either sell out or quit the business, and when the field by such means would be cleared the prices would be at the will of the survivor. There would be no advantage to the people in that. On the other hand, it will not do to say that this company shall not, because of the superior facilities it possesses for economical manufacturing, put its products on the market at a price that other concerns possessing less facilities can not afford and must therefore leave the field. Nor will it do to say that this corporation shall not buy out the smaller manufacturers and dealers, for that might be unjust to the latter, depriving them of an opportunity to sell when they so desired.

If the International Harvester Company is to be permitted to continue to do business in this State either in its own name or through the agency of respondent it must be on condition that it shall not use its power either to force a competitor to sell or drive it out of the market by unfair methods, and that it will not raise the prices of the articles it sells beyond a fair profit on their cost and the expense of marketing the same. And since the International Harvester Company has been doing business in this State, through the agency of respondent, under license that it had no right to use, it should pay to the State a reasonable sum for the privilege enjoyed, and it should take out a license in its own name under the terms and conditions prescribed in section 3039, Revised Statutes, 1909, and pay therefor the tax in that section prescribed, estimated on the proportion of its capital stock represented by its property and business in Missouri, and subject itself to all the requirements of foreign corporations doing business in this State prescribed in article 1 of chapter 33 of the Revised Statutes of 1909. The license so to be taken out to stand revoked if at any time hereafter on motion of the attorney general it be made to appear to this court that the corporation either in person or by its agent has violated any of the conditions above specified. If the International Harvester Company sees fit to comply with the terms above specified, it may carry on its business in this State either in person or through the agency of the respondent, but not on the respondent's present license.

The International Harvester Company not being a party to this suit, of course we can impose no fine or other penalty on it; it not being in this State it is not subject to

expulsion from our borders. We can only affect it in the person of its representative, the respondent.

The judgment is that the license issued to respondent in 1892 to do business in this State is hereby revoked, and that respondent pay the costs of this suit. But it is further adjudged that if the International Harvester Company shall within six days pay the above-mentioned reasonable sum to be fixed by the court on motion to be hereinafter made and shall take out a license to do business in Missouri on the terms and conditions above specified it may conduct its business here either in its own name or through the respondent as its agent until the license expires by law or a breach of one or more of the conditions above mentioned.

Lamm, Ferris, and Brown, JJ., concur in all except the judgment suggested in this opinion. Judge Kennish not sitting, having been of counsel.

LEROY B. VALLIANT, *C. J.*

14546.

STATE EX INF. ATT'Y GEN'L INF.

vs.

INTERNATIONAL HARVESTER COMPANY, RESP.

Now, at this day, the court, having considered and fully understood the respondent's motion for a rehearing and to modify the judgment herein, doth order that the judgment rendered herein on November 14th, 1911, be, and it is hereby, modified to the extent of reducing the fine of $50,000 therein imposed to $25,000. In other respects that judgment will stand as rendered and the motion for a rehearing is overruled.

Now, at this day, the court, having considered and fully understood the application of Hon. Theodore Brace for an allowance as commissioner herein, doth order that he be, and he is hereby, allowed the sum of $5,000 for his services as such commissioner, and the sum of $431.00 for his expenses incurred as such commissioner. From the said sum of $5,000 for his services is to be deducted the sum of $900, advanced to the commissioner, one-half by the attorney general for the State and one-half by the respondent, the amount to be paid to the commissioner being $4,531, to be taxed as costs. And the said sum of $450 advanced by the attorney general on the part of the State is to be taxed as costs in favor of the State. It is further ordered by the court that the sum of $1,561.80 be, and the same is hereby, allowed in favor of J. L. Roberts, for his services as stenographer herein and for expenses incurred, to be taxed as costs. It is further ordered by the court that the fees of witnesses for attendance and mileage for the State and for the respondent, as shown by the commissioner's report, be, and they are hereby, allowed, and ordered taxed as costs.

In the Supreme Court of Missouri, in banc, October term, 1911, No. 14546.

STATE EX INFORMATIONE ATTORNEY GENERAL E. W. MAJOR, RELATOR,

vs.

THE INTERNATIONAL HARVESTER COMPANY OF AMERICA, RESPONDENT.

PER CURIAM:

Upon motion for rehearing, the judgment heretofore agreed upon in this cause is modified so as to reduce the fine imposed upon respondent from fifty thousand dollars to twenty-five thousand dollars, and said judgment as modified is approved and respondent's motion for rehearing denied.

In the Supreme Court of Missouri. Court in Bank. October term, 1911, No. 14546.

STATE EX INFORMATIONE ATTORNEY GENERAL E. W. MAJOR, RELATOR,

vs.

THE INTERNATIONAL HARVESTER COMPANY OF AMERICA, RESPONDENT.

ON MOTION TO MODIFY JUDGMENT.

I do not concur in the judgment of the majority, on respondent's motion to modify, by which judgment the fine or penalty is reduced from $50,000 to $25,000. I think the fine as originally fixed was low enough and yet a dignified sum for the case. I have always been conservative in matters of this kind. In separate opinion in case of State ex Inf. *vs.* Standard Oil Co., 218 Mo. l. c. 473, I said:

"The opinion calls for but one judgment as to all respondents, that of ouster. Ouster as to the Standard Oil Company of Indiana and the Republic Oil Company is but a slight punishment, for they can continue in business elsewhere. In my way of thinking these companies should not only be ousted of their license to do business in this State, but that a substantial fine should be added. I also think that as to the Waters-Pierce Company, the judgment of ouster should not go. As to it, a judgment of guilt should be entered and a reasonable fine fixed. Even this would be harsh upon the minority stock ownership in the corporation, but as the corporation has violated the law in our discretion we should fix a reasonable punishment. That of ouster, called for by the opinion of my brother, is more than a reasonable punishment. We have full precedents in this court in the Insurance Trust Case, as in others decided by this court.

I therefore concur in the opinion of my brother as to a general judgment of guilty, but think the punishment as to two of the respondents, as indicated by the opinion, is insufficient, and that of the other, the Waters-Pierce Company, is excessive.

And when I suggest that the punishment of the two is not sufficient I do not mean to say that courts should become crazed upon any subject or against any interest, but should be governed by that calm judicial judgment that has always characterized the decree of unbiased judicial tribunals. Popular crazes have no place in the judicial opinion. With these views firmly fixed, I feel that I should insist upon modification of the judgment indicated by the opinion to the extent herein stated. Otherwise I concur."

From that conservation there expressed I do not desire to depart in this case, although such conservation was liable to be shocked by the $1,000,000 fine urged by part of the court in the Standard Oil case. In case of State ex. Inf. *v.* Delmar Jockey Club (200 Mo., 34), no fine was inflicted by a majority of the court, but it must be recollected that in that case an absolute ouster was fixed as a punishment. In the Standard Oil case, supra, we recognized the right of the court to fix a fine in addition to an absolute ouster, for in that case we granted an absolute ouster as to two of the respondents and in addition required each of them to pay a fine of $50,000. As to the third respondent, the Waters-Pierce Oil Co., we granted a conditional ouster, as in this case, and fixed a fine of $50,000.

The evidence in the Standard Oil case shows that the Standard Oil Company proper had acquired a bare majority of the stock in the Waters-Pierce Oil Company and had gained control over the company by reason thereof. Mr. Pierce, the leader of the minority stock, had fought against the violation of the law. So strong was his opposition to the course of conduct which violated our laws, that he was deposed as the head of the corporation which he organized and which bore his name. This was a matter of consideration in fixing the fine in that case, because such fine had to be borne by the minority stockholders as well as by the majority stockholders. These minority stockholders had opposed the violation of law, although their corporation, through the majority holding, had violated the law.

We have nothing like this in the case at bar. In the case at bar not a finger was raised against the open and flagrant violation of our law. The respondent was licensed to do business in this State. It was in this State in open competition with other harvesting companies. Its stock was sold to J. P. Morgan and Company, and for a short time it continued as before in this State. Shortly, however, respondent in utter disregard to our laws, entered into the arrangement by which competition in farm machinery became a thing of the past. From that time (1902) to this it has openly and notoriously violated our laws by maintaining the original unlawful arrangement. For nine years it has been permitted to pilfer the pockets of the agriculturists of this State, and now it is said that a fine of $50,000 is too much. It is now said that $25,000 is sufficient. We do not feel that the matter should pass without notice, and hence this opinion.

Nor is this continuous violation of law all that should be considered. Respondent, as the Milwaukee Harvester Co., had a capital stock of $750,000. When the Morgan crowd got hold of it, this stock was raised to $3,000,000. Under the law it has paid taxes in Missouri only on a basis of the proportional part of that stock used in Missouri.

During all this time, under the evidence, it was really the agent of the International Harvester Co., the New Jersey corporation. The latter was a $120,000,000 concern. Had this latter company undertaken to do business in this State, it would have been compelled to pay taxes on the proportionate part of $120,000,000 which was used in Missouri instead of the proportionate part of $3,000,000. The whole thing was a cunning device to enable the big corporation to do business in Missouri by the payment of about one-fortieth of the taxes which it otherwise would have been compelled to pay. In other words, the State has lost taxes in the same proportion as the $3,000,000, the capital stock of the one concern, is to $120,000,000, the

capital stock of the real party in interest. To this scheme and device the respondent in this case was a party. This scheme and device was executed by the respondent under its license in Missouri. Through the act of respondent the State has lost in taxes more than the fine fixed, to leave out of consideration entirely the flagrant violation of our laws and the filched pocketbooks of purchasers of reapers, mowers, and binders.

Nor do we concur in any velvet-like language used by respondent's counsel in the brief which would make this respondent and its coconspirators appear as angels of mercy to the buying public of Missouri. Its sole purpose was to stifle competition and ruin prices. Prices were lowered in 1903 after the combine. See record of evidence, pages 413–429, and 468. That this was to further drive out competitors there can be no question. That it turned out as the parties thought it would is evidenced by the fact that in that year the combine was able to take over the D. M. Osborne Co., a strong competitor, as well as other smaller concerns. Later, prices were raised, and but for vigorous prosecution would no doubt have been repeatedly raised by slight and gradual advances. To all of those acts the respondent at bar was an active party. Different was the acts of Pierce and his parties in the Standard Oil case. There we had something upon which to base the merciful action of the court, but here we have not.

To conclude, the respondent in this case has (1) openly violated our laws, whilst domiciled in this State, by entering into an arrangement to thwart competition; (2) defrauded the State of taxes to which it was entitled; (3) has participated in lowering prices and driving other competitors from the field; (4) has for nine years maintained an unlawful arrangement to decrease competition in this State contrary to our laws; and (5) has by its conduct been able to filch the purse of our agriculturalists. If the original judgment of a fine of $50,000 is not exceedingly reasonable, then my conservatism has indeed been warped.

For these reasons I dissent from the judgment of the majority in reducing the fine in this case. Woodson, J., concurs in these views.

W. W. GRAVES, *J.*

BOND.

Know all men by these presents that we, International Harvester Company of America, a corporation organized and existing under and by the laws of the State of Wisconsin, as principal, and National Surety Company, as surety, are held and firmly bound in the penal sum of fifty thousand dollars ($50,000), to be paid to the State of Missouri, for the benefit of whom it may concern, and for the payment whereof, well and truly to be made, we hereby jointly and severally bind ourselves, successors, and assigns, firmly by these presents:

The condition of this obligation is such, that, whereas in the Supreme Court of the State of Missouri, in the cause entitled, "The State of Missouri, on the Information of the Attorney-General, *v.* International Harvester Company of America," being No. 14546, where judgment has been rendered ousting the International Harvester Company of America from the right to do business in the State of Missouri and fining it in the sum of twenty-five thousand dollars ($25,000); and

Whereas it is the desire of the International Harvester Company of America, the said respondent, to review the said judgment and decision of said court in the Supreme Court of the United States, and to that end a writ of error has been by said International Harvester Company of America prayed for and allowed by the chief justice of the Supreme Court of Missouri:

Now, therefore, if the said International Harvester Company of America shall prosecute its said writ of error to effect and answer all damages and costs which may be adjudged against it, then this bond to be null and void, otherwise to remain in full force and effect.

In witness whereof the International Harvester Company of America has caused these presents to be signed by its president, and its corporate seal to be hereto attached, attested by its secretary, duly authorized thereto; and the said National Surety Company has caused these presents to be signed by Homer H. McKee and T. J. Loranger its resident vice president and resident asst. secretary this 6th day of December, A. D. 1911.

INTERNATIONAL HARVESTER COMPANY OF AMERICA,
By R. C. HASKINS, *its President.*

OPINION OF THE SUPREME COURT OF THE UNITED STATES DELIVERED JUNE 8, 1914, IN THE CASE OF THE INTERNATIONAL HARVESTER CO. OF AMERICA VS. THE STATE OF MISSOURI.

Supreme Court of the United States. No. 166. October term, 1913.

International Harvester Company of America, plaintiff in error, *v.* The State of Missouri, on the information of its attorney general. In error to the Supreme Court of the State of Missouri. [June 8, 1914.]

Mr. Justice McKenna delivered the opinion of the court.

Information in the nature of quo warranto brought in the supreme court of the State to exclude plaintiff in error from the corporate rights, privileges, and franchises exercised or enjoyed by it under the laws of the State, that they be forfeited, and all or such portion of its property as the court may deem proper be confiscated, or in lieu thereof a fine be imposed upon it in "punishment of the perversion, usurpation, abuse, and misuse of franchises."

The ground of the action is the alleged violation of the statutes of the State passed, respectively, in 1899 and 1909 and entitled "Pools, trusts, and conspiracies" and "Pools, trusts, and conspiracies and discriminations."

The facts alleged in the information are these: Plaintiff in error is a Wisconsin corporation engaged in the manufacture and sale of agricultural implements, binders, mowers, etc., and was licensed on the 5th of April, 1892, to do business in Missouri under the name of the Milwaukee Harvester Co., and on September 18, 1902, became licensed to do and engaged in such business in the State. In that year the International Harvester Co. of New Jersey was organized with a capital stock of $120,000,000 for the purpose of effecting a combination of plaintiff in error and certain other companies to restrain competition in the manufacture and sale of such agricultural implements in Missouri, and the New Jersey company has maintained plaintiff in error as its sole selling agent in Missouri. Before the combination the companies combined were competitors of one another and of other corporations, individuals, and partnerships engaged in the same business in the State, and that thereby the people of the State, and particularly the retail dealers and farmers of the State, received the benefit of competition in the purchase and sale of farm implements. The combination was designed and made with a view to lessen, and it tended to lessen, free competition in such implements, and thereby the said corporations entered into and became members of a pool, trust, combination, and agreement. In furtherance thereof, and for the purpose of giving the International Harvester Co. of New Jersey a monopoly of the business of manufacturing and selling agricultural implements in the State, and for the purpose of preventing competition in the sale thereof, plaintiff in error has compelled the retail dealers in each county of the State who desire to handle and sell or act as agent for it to refrain from selling implements manufactured or sold by competing companies or persons. By reason thereof competition in such implements has been restrained, prices controlled, the quantity of such implements has been fixed and limited, and plaintiff in error has been able to secure and for several years enjoy from 85 to 90 per cent of the business, all to the great damage and loss of the people of the State; and by reason of its participation in the pool, trust, and combination, and by reason of the acts and things done by it plaintiff in error has been guilty of an illegal, willful, and malicious perversion and abuse of its franchises, privileges, and licenses granted to it by the State.

The answer of plaintiff in error denied that it had become a party to any combination or that in its transactions there was any purpose to restrain or lessen competition, or that trade had been or was restrained.

The case was referred to a special commissioner to take the evidence and report his conclusions. He found, as alleged in the information, that the International Harvester Co. of New Jersey was a combination of the properties and businesses of formerly competing harvester companies, and plaintiff in error, being one of such companies, and thereafter, by selling the New Jersey company's products in Missouri, had violated the Missouri statutes against pools, trusts, and conspiracies.

In exceptions to the report of the special commissioner, plaintiff in error urged that the statute of Missouri violated the equality clause and due-process clause of the fourteenth amendment of the Constitution of the United States, "(1) because said statute arbitrarily discriminates between persons making or selling products and commodities and persons selling labor and service of all kinds, in that each section of said statute applies only to articles of merchandise and not to labor or services and the like, the prices of which are equally and similarly determined by competition, and may be equally and similarly the subject of combination and conspiracy to the detriment of

the public; (2) because said statute arbitrarily discriminates between the makers and sellers of products and commodities and the purchasers thereof; it prohibits manufacturers and sellers from making contracts or arrangements intended or tending to increase the market price of the articles they make or sell, but does not prohibit purchasers from combining to fix or reduce the market price of the commodities or articles to be purchased by them; (3) because said statute, as construed by the commissioner, unreasonably and arbitrarily interferes with plaintiff in error's right to make proper and reasonable business contracts, and deprives it of property rights in respect thereto."

These exceptions were urged and argued in the supreme court upon the filing of the commissioner's report. Judgment was entered upon the report, in which it was adjudged that, by reason of the violation of the statutes of the State, as charged in the information, plaintiff in error had forfeited the license theretofore granted to it to do business in the State, and it was adjudged that the license be forfeited and canceled and the company ousted from its rights and franchises granted by the State to do business in the State, and a fine of $50,000 was imposed upon it. It was, however, provided that upon payment of the fine on or before the 1st of January, 1912, and immediately ceasing all connection with the International Harvester Co. of New Jersey and the corporations and copartnerships with which it had combined, and not continuing and maintaining the unlawful agreement and combination with them to lessen and destroy competition in the sale of the enumerated farm implements and giving satisfactory evidence thereof to the court, the judgment of ouster should be suspended. The company was given until March 1, 1912, "to file its proof of willingness" to comply with the judgment. It was also adjudged that upon a subsequent violation of the statute "the suspension of the writ of ouster shall be removed" by the court "and absolute ouster be enforced," and to that end the court retained "its full and complete jurisdiction over the cause." (237 Mo., 369.)

A motion is made to dismiss on the ground that plaintiff in error in its answer simply denied that it had violated the antitrust laws of the State, and it is contended that by not alleging in its answer that those laws violated the Constitution of the United States it waived such defense. It is further contended that because the Federal right was not asserted in the answer the supreme court of the State could not have considered and did not consider or decide it. Decisions of the Supreme Court of Missouri are cited to sustain the contentions. The decisions declare the proposition that constitutional questions must be raised at the first opportunity, or, as it is expressed in one of the cases (Brown *v.* Railway Co., 175 Mo., 1), "the protection of the Constitution must be timely and properly invoked in the trial court."

In Milling Company *v.* Black (242 Mo., 31) it is said: "The ruling of this court is that so grave a question [constitutional question] must be lodged at the first opportunity or it will be deemed to have been waived. If it can be properly and naturally raised in the pleadings, and thereby be a question lodged in the record proper, such is the time and place to raise it," and that it is too late to raise the question after judgment in a motion for a new trial. In Hertzler *v.* Railway Co. (218 Mo., 1) it was held: "A motion for a new trial was not the first door for the question to enter, and in our later decisions we have ruled that a question of such gravity must be raised as soon as orderly procedure will allow. This in order that the trial court may be treated fairly and the question got into the case under correct safeguards and earmarked as of substance and not mere color."

It is manifest, we think, that the court only intended to express the condition of appellate review to be that in the trial court constitutional questions should not be reserved until the case had gone to judgment on other issues and then used to secure a new trial. The principle of the rulings is satisfied in the case at bar. It is, as we have seen, an original proceeding in the supreme court, and upon the report of the commissioner which brought the case to the court for decision of the issues and questions involved in it the Federal questions were made "under correct safeguards and earmarked as of substance and not mere color." It is true the court has not referred to them in its opinion, but we can not regard its silence as a condemnation of the time or manner at or in which they were raised. The motion to dismiss is therefore denied.

The assignments of error necessarily involve a consideration of the statutes. The relevant provisions are contained in section 10301 of the Revised Statutes of the State of 1909, and section 8966 of the Revised Statutes of 1899.

Section 10301 provides "that all arrangements, contracts, agreements, combinations, or understandings made or entered into between two or more persons, designed or made with a view to lessen, or which tend to lessen, lawful trade, or full and free competition in the importation, transportation, manufacture, or sale" in the State "of any product, commodity, or article, or thing bought or sold," and all such arrangements, etc., "which are designed or made with a view to increase, or which tend

to increase, the market price of any product, commodity, or article or thing, of any class or kind whatsoever, bought and sold," are declared to be against public policy, unlawful, and void, and those offending "shall be deemed and adjudged guilty of a conspiracy in restraint of trade and punished" as provided.

Section 8966 provides that arrangements, etc., such as described in section 10301, having like purpose, and all such arrangements, etc., "whereby and under the terms of which it is proposed, stipulated, provided, agreed, or understood that any person, association of persons, or corporations doing business in" the State, "shall deal in, sell, or offer for sale" in the State "any particular or specific article, product, or commodity, and shall not during the continuance or existence of any such arrangement * * * deal in, sell, or offer for sale," in the State, "any competing article, product, or commodity," are declared to be against public policy, unlawful, and void; and any person offending "shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties" provided.

By section 10304 of the Revised Statutes of 1909 it is provided that domestic offending corporations shall forfeit their charters and all or any part of their property as shall be adjudged by a court of competent jurisdiction, or be fined in lieu of the forfeiture of charters or of property.

Foreign offending corporations shall forfeit their right to do business in the State, with forfeiture also of property or, in lieu thereof, the payment of a fine.

In State *v.* Standard Oil Co. (218 Mo., 1, 370, 372) the supreme court held that the antitrust statutes of the State "are limited in their scope and operations to persons and corporations dealing in commodities, and no not include combinations of persons engaged in labor pursuits." And, justifying the statutes against a charge of illegal discrimination, the court further said that "it must be borne in mind that the differentiation between labor and property is so great that they do not belong to the same general classification of rights, or things, and have never been so recognized by the common law or legislative enactments."

Accepting the construction put upon the statute, but contesting its legality as thus construed, plaintiff in error makes three contentions: (1) The statutes as so construed unreasonably and arbitrarily limit the right of contract; (2) discriminate between the vendors of commodities and the vendors of labor and services; and (3) between vendors and purchasers of commodities.

(1) The specification under this head is that the supreme court found, it is contended, benefit—not injury—to the public had resulted from the alleged combination. Granting that this is not an overstatement of the opinion, the answer is immediate. It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect. (Armour Packing Co. *v.* United States, 209 U. S., 56, 62; Standard Sanitary Mfg. Co. *v.* United States, 226 U. S., 20, 49.) The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it. And such is explicitly the purpose and policy of the Missouri statutes; and they have been sustained by the Supreme Court. There is nothing in the Constitution of the United States which precludes a State from adopting and enforcing such policy. To so decide would be stepping backward. (Carrol *v.* Greenwich Ins. Co., 199 U. S., 401; Central Lumber Co. *v.* South Dakota, 226 U. S., 157.)

It is true that the Supreme Court did not find a definite abuse of its powers by plaintiff in error, but it did find that there was an offending against the statute, a union of able competitors, and a cessation of their competition, and the court said: "Some of the smaller concerns that were competitors in the market have ceased their struggle for existence and retired from the field." This is one of the results which the statute was intended to prevent, the unequal struggle of individual effort against the power of combination. The preventing of the engrossment of trade is as definitely the object of the law as is price regulation of commodities, its prohibition being against combinations "made with a view to lessen, or which tend to lessen, lawful trade or full and free competition in the importation, transportation, manufacture, or sale of any commodity or article or thing bought or sold." (See Standard Oil Co. *v.* United States, 221 U. S., 1; United States *v.* American Tobacco Co., id., 106; United States *v.* Patten, 225 U. S., 525.)

(2) and (3) These contentions may be considered together, both involving a charge of discrimination—the one because the law does not embrace vendors of labor, the other because it does not cover purchasers of commodities as well as vendors of them. Both, therefore, invoke a consideration of the power of classification which may be exerted in the legislation of the State. And we shall presently see that power has very broad range. A classification is not invalid because of simple inequality. We said in Atchison, Topeka & Santa Fe Ry. Co. *v.* Matthews (174 U. S., 96, 196), by Mr. Justice Brewer, "The very idea of classification is that of inequality, so that it

goes without saying that the fact of inequality in no manner determines the matter of constitutionality." Therefore it may be there is restraint of competition in a combination of laborers and in a combination of purchasers, but that does not demonstrate that legislation which does not include either combination is illegal. Whether it would have been better policy to have made such comprehensive classification it is not our province to decide. In other words, whether a combination of wage earners or purchasers of commodities called for repression by law under the conditions in the State was for the legislature of the State to determine.

In Carroll *v.* Greenwich Ins. Co., supra, a statute of Iowa was considered which made it unlawful for two or more fire insurance companies doing business in the State, or their officers or agents to make or enter into combinations or agreements in relation to the rates to be charged for insurance and certain other matters. The provision was held invalid by the circuit court of the United States for the district of Iowa on the ground of depriving of liberty of contract secured by the fourteenth amendment and of the equal protection of the laws. This court reversed the decision, saying, after stating that there was a general statute of Iowa which prohibited combinations to fix the price of any article of merchandise or commodity or to limit the quantity of the same produced or sold in the State, "Therefore, the act in question does little if anything more than apply and work out the policy of the general law in a particular case." Again, "If an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all-embracing terms." And, "If the legislature of the State of Iowa deems it desirable artificially to prevent, so far as it can, the substitution of combination for competition, this court can not say that fire insurance may not present so conspicuous an example of what the legislature thinks an evil as to justify special treatment. The imposition of a more specific liability upon life and health insurance companies was held valid in Fidelity Mutual Life Insurance Co. *v.* Mettler (185 U. S., 308)."

Other cases were also cited in illustration.

Carroll *v.* Greenwich Ins. Co., supra, is especially opposite. It contains the elements of the case at bar and a decision upon them. It will be observed that the statute, which it was said declared the general policy of Iowa, was a prohibition against a combination of producers and sellers. There was the same distinction, therefore, between vendors and purchasers of commodities as in the Missouri statute and the same omission of prohibition of combinations of vendors of labor and services as in the Missouri law. The distinction and omission were continued when the policy of the State was extended to insurance companies. The law was not condemned because it went no further—because it did not prohibit the combination of all trades, businesses, and persons. We held that the omission was not for judicial cognizance, and that a court could not say that fire insurance might not present so conspicuous an example of what the legislature might think an evil "as to justify special treatment."

We might leave the discussion with that and the other cases. They decide that we are helped little in determining the legality of a legislative classification by making broad generalizations, and it is for a broad generalization that plaintiff in error contends—indeed, a generalization which includes all the activities and occupations of life, and there is an enumeration of wage earners in emphasis of the discrimination in which manufacturers and sellers are singled out from all others. The contention is deceptive, and yet it is earnestly urged in various ways which it would extend this opinion too much to detail. "In dealing with restraints of trade," it is said, "the proper basis of classification is obviously neither in commodities nor services, nor in persons, but in restraints." A law to be valid, therefore, is the inflexible deduction, can not distinguish between "restraints," but must apply to all restraints, whatever their degree or effect or purpose, and that because the Missouri statute has not this universal operation it offends against the equality required by the fourteenth amendment. This court has decided many times that a legislative classification does not have to possess such comprehensive extent. Classification must be accommodated to the problems of legislation, and we decided in Ozan Lumber Co. *v.* Union County Bank (207 U. S., 251) that it may depend upon degrees of evil without being arbitrary or unreasonable. We repeated the ruling in Heath & Milligan Manufacturing Co. *v.* Worst (Id., 338), in Engel *v.* O'Malley (219 U. S., 128), in Mutual Loan Co. *v.* Martell (222 U. S., 225), and again in German Alliance Insurance Co. *v.* Lewis (233 U. S., 389, 418). In the latter case a distinction was sustained against a charge of discrimination between stock fire insurance companies and farmers' mutual insurance companies insuring farm property. If this power of classification did not exist, to what straits legislation would be brought.

We may illustrate by the examples furnished by plaintiff in error. In the enumeration of those who, it is contended, by combination are able to restrain trade are in-

cluded, among others, "persons engaged in domestic service" and "nurses," and because these are not embraced in the law, plaintiff in error, it is contended, although a combination of companies uniting the power of $120,000,000 and able thereby to engross 85 or 90 per cent of the trade in agricultural implements, is nevertheless beyond the competency of the legislature to prohibit. As great as the contrast is, a greater one may be made. Under the principle applied a combination of all the great industrial enterprises (and why not railroads as well?) could not be condemned unless the law applied as well to a combination of maidservants or to infants' nurses, whose humble functions preclude effective combination. Such contrasts and the considerations they suggest must be pushed aside by government, and a rigid and universal classifications applied, is the contention of plaintiff in error; and to this the contention must come. Admit exceptions, and you admit the power of the legislature to select them. But it may be said the comparison of extremes is forensic, and, it may be, fallacious; that there may be powerful labor combinations as well as powerful industrial combinations, and weak ones of both, and that the law to be valid can not distinguish between strong and weak offenders. This may be granted (Engel *v.* O'Malley, supra), but the comparisons are not without value in estimating the contentions of plaintiff in error. The foundation of our decision is, of course, the power of classification which a legislature may exercise, and the cases we have cited, as well as others which may be cited, demonstrate that some latitude must be allowed to the legislative judgment in selecting the "basis of community." We have said that it must be palpably arbitrary to authorize a judicial review of it, and that it can not be disturbed by the courts "unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched." (Mo., Kans. & Tex. Ry. Co. *v.* May, 194 U. S., 267, 269; Williams *v.* State of Ark., 217 U. S., 79, 90; Watson *v.* State of Maryland, 218 U. S., 173, 179.)

The instances of these cases are instructive. In the first, there was a difference made between landowners as to liability for permitting certain noxious grasses to go to seed on the lands. In the second, the statute passed on made a difference between businesses in the solicitation of patronage on railroad trains and at depots. In the third, a difference based on the evidence of qualification of physicians was declared valid.

In Western Union Telegraph Co. *v.* Milling Co. (218 U. S., 406), a distinction was made between common carriers in the power to limit liability for negligence. In Engel *v.* O'Malley, supra, a distinction between bankers was sustained; and in Provident Savings Institution *v.* Malone (221 U. S., 660) deposits in savings banks were distinguished from deposits in other banks in the application of the statute of limitations.

Other cases might be cited whose instances illustrate the same principle and in which this court has refused to accept the higher generalizations urged as necessary to the fulfillment of the constitutional guaranty of the equal protection of the law, and in which we, in effect, held that it is competent for a legislature to determine upon what differences a distinction may be made for the purpose of statutory classification between objects otherwise having resemblances. Such power, of course, can not be arbitrarily exercised. The distinction made must have reasonable basis. (Magoun *v.* Illinois Trust, etc., Bank, 170 U. S., 283; Clark *v.* Kansas City, 176 U. S., 114; Gundling *v.* Chicago, 177 U. S., 183; Petit *v.* Minnesota, 177 U. S., 164; Williams *v.* Fears, 179 U. S., 270; American Sugar Refining Co. *v.* Louisiana, 179 U. S., 89; Griffith *v.* Connecticut, 218 U. S., 563; Chicago, R. I. & Pac. R. Co., 219 U. S., 453, 466; Lindsay *v.* Natural Carbonic Gas Co., 220 U. S., 61, 79; Fifth Avenue Coach Co. *v.* New York, 221 U. S., 467; Murphy *v.* California, 225 U. S., 623; Rosenthal *v.* New York, 226 U. S., 269, 270; Mo., Kan. & Tex. Ry. *v.* Cade, 233 U. S., —.)

And so in the case at bar. Whether the Missouri statute should have set its condemnation on restraints generally, prohibiting combined action for any purpose and to everybody, or confined it, as the statute does, to manufacturers and vendors of articles and permitting it to purchasers of such articles; prohibiting it to sellers of commodities and permitting it to sellers of services, was a matter of legislative judgment, and we can not say that the distinctions made are palpably arbitrary, which we have seen is the condition of judicial review. It is to be remembered that the question presented is of the power of the legislature, not the policy of the exercise of the power. To be able to find fault, therefore, with such policy is not to establish the invalidity of the law based upon it.

It is said that the statute as construed by the supreme court of the State comes within our ruling in Connelly *v.* Union Sewer Pipe Co. (184 U. S., 540), but we do not think so. If it did, we should, of course, apply that ruling here.

Judgment affirmed.

The sections of the Missouri statutes quoted in the above decision are as follows:

[Sec. 8966, Revised Statutes of Missouri for 1899.]

SEC. 8966. *Certain agreements declared unlawful.*—That from and after the passage of this article all arrangements, contracts, agreements, or combinations between persons or corporations, or between persons or any association of persons and corporations, designed or made with a view to lessen or which tend to lessen full and free competition in the importation, manufacture, or sale of any article, product, or commodity in this State, and all arrangements, combinations, contracts, or agreements whereby or under the terms of which it is proposed, stipulated, provided, agreed, or understood that any person, association of persons, or corporations doing business in this State shall deal in, sell, or offer for sale in this State any particular or specified article, product, or commodity and shall not during the continuance or existence of any such arrangement, combination, contract, or agreement deal in, sell, or offer for sale in this State any competing article, product, or commodity, are hereby declared to be against public policy, unlawful, and void, and any person, association of persons, or corporation becoming a party to any such arrangement, contract, agreement, or combination shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties provided for in this article. (Laws 1897, p. 208.)

[Sec. 10301, Revised Statutes of Missouri for 1909.]

SEC. 10301. *Combination to increase prices declared conspiracy.*—All arrangements, contracts, agreements, combinations, or understandings made or entered into between any two or more persons designed or made with a view to lessen or which tend to lessen lawful trade or full and free competition in the importation, transportation, manufacture, or sale in this State of any product, commodity, or article, or thing bought and sold, of any class or kind whatsover, including the price or premium to be paid for insuring property against loss or damage by fire, lightning, or storm, and all arrangements, contracts, agreements, combinations, or understandings made or entered into between any two or more persons which are designed or made with a view to increase or which tend to increase the market price of any product, commodity or article, or thing of any class or kind whatsoever bought and sold, including the price or premium to be paid for insuring property against loss or damage by fire, lightning, or storm, are hereby declared to be against public policy, unlawful, and void; and any person or persons creating, entering into, becoming a member of or participating in such arrangements, contracts, agreements, combinations, or understandings shall be deemed and adjudged guilty of a conspiracy in restraint of trade and punished as provided for in this article. (Laws 1907, p. 377.)

[Sec. 10304, Revised Statutes of Missouri for 1909.]

SEC. 10304. *Offending corporations to forfeit charter and property.*—Any corporation created or organized by or under the laws of this State which shall violate any of the provisions of this article may, upon proper proof being made thereof in any court of competent jurisdiction in this State, be declared by the court to have forfeited its corporate rights and franchises, and the same may by the court be declared forfeited, void, and of noneffect, and shall thereupon cease and determine; and such court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the State, or in lieu of the forfeiture of its corporate rights and franchises, or in lieu of the forfeiture of all or any part of the property of such corporation, assess against it a fine; and any corporation created or organized by or under the laws of any other State or country which shall violate any of the provisions of this article shall, upon proper proof being made thereof in any court of competent jurisdiction in this State, be declared by the court to have forfeited its right and privilege thereafter to do any business in this State, and the same shall by the court be declared forfeited, void, and of noneffect, and shall thereupon cease and determine; and such court may, by judgment and decree, also declare all or any part of the property in this State of such corporation forfeited unto the State, or in lieu of the forfeiture of its right and privilege to do business in this State, or in lieu of the forfeiture of all or any part of the property of such corporation, assess against it a fine; and in all proceedings for the violation of any of the provisions of this article against any corporation created or organized under the laws of this or any other State or country, proof of the acts of any person who has been acting as the agent of such corporation in transacting its business in this State in the name, behalf, or interest of such corporation shall be received as prima facie proof of the acts of the corporation itself; and it shall be the duty of the clerk of the court in which any judgment of forfeiture shall be rendered, as herein provided for, to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of

the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation; and in case any court shall render a decree forfeiting all or any part of the property of any corporation violating the provisions of this article, such court shall also appoint a receiver thereof to dispose of the same in such manner as the court may direct, and the net proceeds arising from the sale thereof shall be paid into the State treasury, as shall all fines that may be imposed against any person or corporation violating the provisions of this article be paid into the State treasury. (Laws 1907, p. 377.)

Thereupon, on a motion to report favorably on the nomination of Mr. Jones, the roll was called and resulted as follows: Yeas—Senators Pomerene, Lee, Hollis, and Shafroth. Nays—Senators Reed, Nelson, McLean, Bristow, Weeks, Crawford, and Hitchcock. Four members having voted in the affirmative and seven in the negative, the motion was lost. Thereupon a motion was made and carried that the acting chairman be instructed to report adversely on the nomination of Mr. Jones at such time as the record of the hearings before the committee could be perfected.

It was moved and carried that Senator Hollis be permitted to cast the vote of Senator Owen as directed by cable. Senator Hollis, on consideration, declined to do so.

(Thereupon the committee adjourned, subject to the call of the chairman.)

WEDNESDAY, JULY 15, 1914.

COMMITTEE ON BANKING AND CURRENCY,
UNITED STATES SENATE,
Washington, D. C.

The committee assembled in executive session at 11.30 o'clock a. m.

Present: Senators Hitchcock (acting chairman), Reed, Pomerene, Shafroth, Hollis, Lee, Nelson, Bristow, Crawford, McLean, and Weeks.

Senator HITCHCOCK. The committee is gathered for the purpose of completing the record in the matter of the nomination of Thomas D. Jones for appointment as a member of the Federal Reserve Board.

Senator REED. Mr. Chairman, I heretofore offered certain parts of the record in the case of The State of Missouri *v.* The International Harvester Co., and I understand them now to be a part of the record in this matter.

Senator HITCHCOCK. You may turn those over to the reporter in detail, for the purpose of having them printed in the record.

Senator REED. Yes. It embraces all of the memorandum that I now hand the reporter, down to and including paragraph 11; that takes the whole formal record of the Supreme Court of Missouri; and it includes also the findings of fact, the judgment of ouster, the modification of the judgment, and the decision of the Supreme Court of the United States.

(The papers referred to will be found incorporated in the proceedings of the committee of July 9, 1914, p. 70, supra.)

Senator REED (continuing). I now desire to put into the record the following printed testimony in the case of United States *v.* The International Harvester Company, which case is now pending in the

district court of the United States for the district of Minnesota, to wit:

(*a*) Defendant's Exhibit No. 108, volume 14, page 284, being a commission agency contract.

I wish to call special attention to section 5, in regard to the fixed selling price, and section 23, which prohibits the selling of other machines. The part introduced embraces pages 284 to 289, inclusive.

(*b*) Defendant's Exhibit No. 111, in the same case, being the commission agency contract for 1905; and I call special attention to sections 5 and 22, volume 14, page 292.

(*c*) The petition in equity in the above-entitled cause.

(*d*) The brief for the United States in the same cause, which has been printed, and which I have here [indicating].

(NOTE.—For subsequent action upon these and other documents offered, see p. 151 of this record.)

Senator LEE. Mr. Chairman, may I ask a question here?

Senator HITCHCOCK. Certainly.

Senator LEE. Would it not be advisable to have it understood that, if it is thought advisable to submit any other briefs or documents making a part of these particular records in order to complete them, they will go in in sequence, even though they might be offered separately?

Senator HITCHCOCK. They should be offered before the committee here.

Senator LEE. Before the committee; but they should go in in sequence, to make the record complete and in order.

Senator HITCHCOCK. Yes.

Senator LEE. Take the brief of the Harvester Co., for instance.

Senator REED. If anybody has it here, I am perfectly willing that it should go in.

Senator POMERENE. It seems to me that this documentary evidence which Senator Reed is referring to has already been offered in evidence; and it seems to me that he should offer that which they desire to put in, and then let other members of the committee offer that which they desire to incorporate.

Senator REED. That is right. I will make my offers now; and if there is anything else offered hereafter which should be printed in direct connection with anything I have offered, let it be printed in that form.

Senator LEE. Yes.

Senator REED. (13) I offer in evidence a part of the report of the Bureau of Corporations, under date of March 3, 1913, which relates especially to the International Harvester Co.; and I desire the following extracts from this report to be made a part of the record:

(*a*) Chapter 2, page 67, formation of the International Harvester Co.

I desire in this connection to call special attention to sections 2, 3, and 4, and the whole of chapter 2, pages 67 to 93, inclusive. And I ask to have that matter printed.

(*b*) All of chapter 3, section 1, showing the watered stock of the company; pages 94 to 135, inclusive.

Senator HOLLIS. That is the same Commissioner of Corporations' report?

Senator REED. Now, the term "watered stock" is my term; and I am simply using it in its descriptive way.

Senator HOLLIS. Well, do you think you ought to use the term that way? It misled me. I supposed you were referring to some part of the report. I ask if you are referring to the report of the Commissioner of Corporations now?

Senator REED. I am.

Senator LEE. Do you not think you ought to refer to the pages?

Senator REED. Let me change the term "watered stock" to "the basis for the stock issued by the company."

(*c*) That part of the report which appears on pages 136 to 143, inclusive, of chapter 4, and which relates to the acquisition of competing concerns.

And in this connection, I ask to have printed all of sections 1, 2, and 3 of chapter 4.

(*d*) I offer that part of the report known as section 14, appearing on pages 164 and 165, which relates to the organization of the International Harvester Co. I ask to have that printed.

(*e*) I offer sections 16 and 17, pages 178 to 189, inclusive, which relates to the controlling influence this company has on business.

Senator WEEKS. Do you mean on all business?

Senator REED. On the business of harvesting implements.

Senator WEEKS. Do you not want to put that in?

Senator NELSON. Agricultural implements.

Senator REED. Agricultural implements, I should have said; not harvesting implements.

(*f*) I offer the summary, section 5, pages 288 to 289, inclusive.

(*g*) I offer section 1, pages 290–291; also sections 4, 5, 6, 7, 8, and 9, as they appear on pages 296 to 323, inclusive.

I also offer section 11, for the purpose of throwing light upon the competitive methods in business and the relation of this company thereto.

(14) I desire to print memoranda showing the number of anti-trust cases that have been filed against the International Harvester Co.

Senator NELSON. Civil and criminal?

Senator REED. So far as I have them; and I want to say that this statement which I have may be incomplete, but I believe it to be absolutely accurate as far as it goes.

Senator BRISTOW. Does it give the dates when the suits were filed?

Senator REED. I can give those in some instances.

Senator WEEKS. Are some of them criminal cases?

Senator NELSON. Yes.

Senator REED. (*a*) State of Missouri *v.* International Harvester Co., reported in 141 Southwestern Reporter, 672, Missouri Supreme Court; decided November 27, 1911. Information in quo warranto by State; trial in the supreme court, October term, 1907; judgment of ouster suspended upon payment of $50,000, which was afterwards modified to $25,000; and order of severance of connection with New Jersey company. Judgment sustained in United States Supreme Court June 8, 1914.

(*b*) State of Kansas *v.* International Harvester Co., 99 Pacific Reporter, 603; also reported in 79 Kansas, 371; judgment being rendered on January 9, 1909, by the supreme court of Kansas. Infor-

mation was filed October 13, 1906; verdict of guilty on 42 counts and fines aggregating $12,600. Judgment affirmed.

(*c*) State of Kansas *v.* International Harvester Co., reported in 186 Pacific Reporter; judgment February 12, 1910, being a civil proceeding for forfeiture of charter; modified judgment of ouster from doing business in the State.

(*d*) I put in at this point telegram from the attorney general of Texas, dated July 11, 1914, addressed to me, which was sent in response to an inquiry as to whether the International Harvester Co. had ever been attached in the courts of that State. The telegram reads:

SEPTEMBER, 1907.

International Harvester Co. of America pleaded guilty in a prosecution by the State charging violation of antitrust laws; was fined $35,000; its permit to do business in the State canceled; injunction issued prohibiting transaction of any other than interstate business. The record in this case was not printed, and the testimony upon which suit was instituted is not in available form to be forwarded.

B. F. LOONEY, *Attorney General.*

Senator LEE. Mr. Chairman, I would like to enter an inquiry here as to the pertinency of that telegram, which refers to a proceeding and a fine imposed two years before the witness, Mr. Jones, became a member of the board of directors of the International Harvester Co.

Senator REED. Mr. Chairman, there are two questions involved here: First, was this concern ever a trust? Second, was it a trust at the time Mr. Jones became connected with it, and did it continue to be a trust? There is also a third question, whether Mr. Jones when he went into this concern knew that it was a criminal concern; and here is the judgment of a court rendered before he came in solemnly adjudging it to be guilty upon its plea of guilty. Therefore I say it is pertinent.

Senator LEE. Mr. Chairman, I would like to suggest that before this telegram is admitted, or if it is admitted, the practice which is brought in question and penalized should be sufficiently described in order that it may be known to the committee and to the Senator whether or not that practice was a continuing one, and whether it has been persisted in since it was objected to before.

Senator REED. It evidently was not persisted in in Texas, for the decree prohibited it.

Senator POMERENE. I have no objection to the telegram going in for what it is worth. There is this technical objection, from a judicial standpoint, namely, that it is only secondary evidence, and the best evidence would be the record itself.

Senator REED. Do you make that objection?

Senator POMERENE. No; I have no objection to it; but it is subject to that technical objection.

Senator REED. Of course it is subject to that technical objection, if we are in a court of law. But it is the custom to receive information of this kind before committees; and if any one desires to dispute it, they have of course the opportunity to do so. I offer it as a prima facie showing. In fact, I think it could be shown by common and public rumor, so far as this case is concerned.

Senator HITCHCOCK. Is there any desire to submit that question to a vote?

Senator POMERENE. No.

Senator HITCHCOCK. Then it will be received in evidence, without objection.

Senator HOLLIS. Not without objection. Objection having been entered, it will be received with objection, but——

Senator HITCHCOCK (Interposing). Without any vote.

Senator HOLLIS. Yes; without a vote.

Senator REED. A member is entitled to object, and thus to save his right to an exception.

(*d*) United States of America *v.* International Harvester Co, filed in 1912, and now pending in the district court of the United States for the District of Minnesota.

(15) I desire to have printed all of Senate Document No. 604, of the Sixty-second Congress, second session; also all of Senate Document No. 454, Sixty-second Congress, second session. Those relate to Mr. Perkin's interference down here on behalf of the Harvester Trust.

(16) Mr. Chairman, I offer the following memoranda with reference to the litigation in Kentucky.:

Commonwealth of Kentucky *v.* International Harvester Co., 144 Southwestern Reporter, 166; decided March 16, 1912, by the Kentucky Court of Appeals. This was a suit to recover penalties for violation of the statute against monopolies. It was begun July 21, 1910, and ended July 21, 1911; verdict and judgment for $5,000; judgment affirmed in the Kentucky Court of Appeals.

(*b*) Commonwealth of Kentucky *v.* International Harvester Co., 145 Southwestern Reporter, 393; Kentucky Court of Appeals, April 10, 1912; criminal prosecution; indictment returned October term, 1911. Defendant defaulted and was fined $500, the minimum fine. Defendant appealed and judgment affirmed.

(*c*) Commonwealth of Kentucky *v.* International Harvester Co , 146 Southwestern Reporter, 12; Kentucky Court of Appeals, April 18, 1912; criminal proceedings instituted in Todd County Circuit Court, March 11; judgment of fine of $2,500; judgment affirmed.

(*d*) Commonwealth of Kentucky *v.* International Harvester Co., 147 Southwestern Reporter, 1199; Kentucky Court of Appeals, March 28, 1912; penal action; fine of $1,500 imposed; judgment affirmed.

I will later furnish the reporter with the documents which I will finally offer in these cases.

Senator HITCHCOCK. Consisting of the action of the Supreme Court of the United States?

Senator REED. In all these cases I will make that statement, and put the matter in at this point so that it will be consecutive.

Senator HITCHCOCK. Without objection, that will be done.

Senator REED. Yes; I think we all want it. I will put in the opinion showing the grounds of the decision.

[After a pause.]

Now, Mr. Chairman, I have this data in regard to the action of the Supreme Court of the United States in the Kentucky cases; and I also introduce the opinions of the Supreme Court of the United States:

(*a*) In cause No. 298, October term, 1913, opinion by Mr. Justice Day; opinion dated June 22, 1914——

Senator SHAFROTH (interposing). Are you going to have all of those put in?

Senator REED. I think so; they are all very short—one page.

Senator SHAFROTH. All right, if they are short.

Senator REED. Also opinion of the United States Supreme Court, by Mr. Justice Holmes, in cases Nos. 276, 291, and 299, October term, 1913, decided June 8, 1914. In the latter opinion, which covers three cases, the court reversed the decision of the Kentucky courts, holding, as I understand it, that the statute was too vague and uncertain to be within the Constitution.

Senator SHAFROTH. Do you not think you had better have that in in full, if it is short?

Senator REED. It is. They are both going in. In cause No. 298, the Supreme Court, in an opinion by Mr. Justice Day——

Senator NELSON (interposing). That is where the court held that they had proper service upon the company.

Senator REED (continuing). Held that there was proper service upon the company, but also held that the law was unconstitutional and the case was reversed.

Now, Mr. Chairman, the letter of Hon. James S. Harlan, of the Interstate Commerce Commission, to Senator Hitchcock, dated July 10, 1914, and transmitting a report of a special examination made by the Interstate Commerce Commission of the relationship existing between the Chestnut Ridge Railway Co., the Mineral Point & Northern Railway Co., and the Depue & Northern Railway Co., and the New Jersey Zinc Co.——

Senator LEE. Mr. Chairman, a copy of that letter that I have is addressed to Hon. James A. Reed, United States Senate. I do not suppose that is a material point.

Senator REED. I will be glad to show you this one [handing paper to Senator Lee]. That is not a copy of this letter [indicating].

Senator LEE. All right. This [indicating] is dated July 9.

Senator REED. What letter have you in mind?

Senator LEE. It contains a very pertinent statement:

> Any expression of views to be found in the report of the examination mentioned is to be understood to be the views of the examiner. The commission itself has not passed upon the facts developed in the report.

And one of those reports I know is contrary to the rules of the commission. For instance, there is a statement of the cost of the longest of those operating railroads which apparently includes the stock and runs the cost up to the neighborhood of $900,000. Now, the statement of one of the officials of the company is that it cost $400,000, and I think the witness has said that the stock is owned by one of the zinc companies, or nearly all owned by one of the zinc companies, and in addition to that the record itself shows that the stock is owned by the zinc company. So the report comes merely from the examiner.

Senator HITCHCOCK. Do you object, then, to this transcript going into the record?

Senator LEE. I do not object to the transcript going in, if it is accompanied by this qualification from the head of the Interstate Commerce Commission, who says that it is merely the opinion of one examiner and has never been passed on by the commission, and here I am pointing out places where the actual opinion of the examiner is inconsistent with the rules of the commission and inconsistent with the witness's testimony, which he quotes himself.

Senator REED. Now, that is a matter of argument. Of course, I do not know how the Senator from Maryland came into possession of a copy of a letter written to me. I have not the slightest objection to that. I am perfectly willing that any letters written to me, or any letters written by me with reference to this matter, should go into the record; but the fact is, so far as I am individually concerned, that I have not yet seen the original of this letter, although it has doubtless been sent to my office.

Senator SHAFROTH. This is not a proceeding in a court. You do not have to make objections and take formal exceptions and that sort of thing. We have a right to have the whole record go in and argue on it and see whether it is relevant or not.

Senator REED. I offer this report [indicating].

Senator LEE. I object, Mr. Chairman, to the including of this alleged report of Examiner Peck—that is what I suppose is coming—unless the letter of the commission explaining its worth prefaces the report.

Senator REED. Very well. I have not the slightest objection to the printing of this letter. I have not even read it yet.

Senator LEE. There it is [handing paper to Senator Reed].

Senator REED. I do not care what is in it. It is perfectly obvious that it is some letter that was written to me which, in the way I have been crowded for time for several days, I have not had a chance to read. But whatever there is in it, if the Senator from Maryland wants to offer it he can do so; and in that connection I am perfectly willing to offer it myself, and will do so.

Senator LEE. Well, I suggest that the Senator offer it ahead of this report.

Senator REED. I suggest that the report go in where I have offered it, and then these comments can come in afterwards.

Senator LEE. I do not see how it can be properly offered unless prefaced by the letter.

Senator REED. Let the reporter read my statement introducing the report in evidence.

(Here the reporter read as follows:)

Senator REED. Now, Mr. Chairman, the letter of Hon. James S. Harlan, of the Interstate Commerce Commission, to Senator Hitchcock, dated July 10, 1914, and transmitting a report of a special examination made by the Interstate Commerce Commission of the relationship existing between the Chestnut Ridge Railway Co., the Mineral Point & Northern Railway Co., and the Depue & Northern Railway Co., and the New Jersey Zinc Co.——

Senator REED (continuing). I would like to have this evidence which I am offering printed directly in connection with the other evidence, so that the evidence may all be together; and if it is agreeable to the Senator from Maryland, this colloquy can appear immediately after my completed offer.

Senator LEE. I object to that. I think the colloquy ought to appear just as it does appear in the actual proceedings of this committee.

Senator REED. Well, I have offered it in that order, and of course in the printing of it it would naturally go in that order, and the colloquy would immediately follow. And since the Senator from Maryland has requested that the letter addressed to me dated July 9, from

James S. Harlan, be incorporated, I offer that in connection with the report.

Senator HITCHCOCK. Senator Lee, have you something to offer?

Senator LEE. I understand that you have offered this opinion by Alred H. Peck, examiner, dated September 12, and which consists of some 53 typewritten pages, Senator Reed?

Senator REED. No; I did not offer the whole of it; I offered parts of it, which are here copied [indicating]. If anybody wants it, all in it can go in. My clerk went over it and took out the parts which he thought were pertinent to this issue; but if anybody wants it all printed, let it all be printed.

Senator LEE. Did this statement of the cost of that 27-mile railroad, showing that it was $973,000, made by this examiner, go in?

Senator REED. Well, if there is any dispute about it and anybody wants it all printed let the whole report be substituted instead of my excerpts. I was trying to abbreviate the record.

Senator LEE. Well, did the statement by W. D. Mahon, one of the officials of that mining road, go in, in which he said that it cost $440,000, and did the statement of the stock ownership on the next page go in, showing that the Mineral Point Zinc Co. owns nearly all of the stock?

Senator REED. I can not answer all of these questions and run through the report at the same time.

Senator NELSON. You must remember, Senator Lee, that the Mineral Point Zinc Co. is owned by the New Jersey Zinc Co.

Senator LEE. Certainly. In other words, this stock is simply held as a sort of muniment of title, and the owners and controllers of this railroad have apparently complied with the Interstate Commerce Commission rules.

Senator NELSON. Yes.

Senator LEE. Whereas the examiner made a statement inconsistent with those rules.

Senator REED. Answering the interrogatory of the Senator from Maryland, the tabulation here [indicating] showing the cost of this road and its subsequent equipment to be $973,000 is here.

Senator LEE. And Mr. Mahon's statement that it really cost $440,000?

Senator REED. I do not know whether Mr. Mahon's full statement is here or not; it does appear that the road and equipment actually cost, according to Mr. W. D. Mahon, about $440,000.

Senator LEE. Yes.

Senator REED. Everything is here, with perfect impartiality, as far as my clerk could get it, which he thought bore upon the case. And I suggest that if any one wants to add to this they can do so. I did not want to print the whole report, because it would cumber the record.

Senator LEE. All right.

Senator REED. I think everything is there but the profits and losses and dividends.

Senator HOLLIS. It seems to me, Mr. Chairman, that what has already been offered will have to be put in definite shape, so that we can ascertain just what it is.

Senator HITCHCOCK. It is here and we can examine it now.

Senator HOLLIS. If you want to take the time. But I think it will be much more useful to have this put in shape and let us see what is put in and determine if we want to reply to it. I have tried a great many lawsuits; and I know that it is impracticable, with all of these gentlemen waiting here, to go through all those documents. It would take two or three hours at least, and you would not want me to do it.

Now, I suppose this is what some of the members of the committee want printed and given to the public. And if that is the purpose of it, it ought to be gone over carefully in order to see what is here and if other material should be furnished to offset it; and I want an opportunity to do that.

Senator NELSON. Why can you not put in the whole document?

Senator HOLLIS. I want an opportunity to examine the documents. This matter is familiar to those who put it in; but I could not anticipate—nobody could anticipate—what was going to be put in; and I want an opportunity to look it over.

Senator REED. I offer the whole report in evidence, in lieu of the excerpts.

Senator HITCHCOCK. The whole report will be received, in the absence of objection, in order to save time.

Senator HOLLIS. I am not speaking about that. I am talking about this whole mass of material which has been. It has been extracted from and excerpted, and certain parts put in; and I want an opportunity to look into it.

Senator LEE. I think the whole record ought to go in, because these are mining railroads, and so far as they are public carriers they have been running at a loss at the expense of this mining company.

Senator HITCHCOCK. Have you anything further to offer, Senator Lee?

Senator LEE. I would like to offer something further, after I have had an opportunity to examine what has been offered.

Senator HITCHCOCK. The only way we can do that is to have a subsequent meeting of the committee. I think these records had better be printed as far as they go and then if any member desires a subsequent meeting it can be held.

Senator LEE. Yes.

Senator SHAFROTH. I think we had better take these excerpts, and then if we have any objection to them we can print the records in full, but I do not believe it necessary to print them in full.

Senator HITCHCOCK. Senator Hollis, have you anything to offer?

Senator HOLLIS. No.

Senator REED. Mr. Chairman, in regard to having a voluminous record of the committee proceedings, the records of the Supreme Court of the United States are before the committee, and as to the formal parts of the record, the extracts from the report of the Commissioner of Corporations are not voluminous. I think we ought to get this record in shape as soon as we can, but I want to be perfectly fair to my associates on the committee.

Senator HITCHCOCK. Has any other Senator any additions to the record to offer.

Senator LEE. I wish to say, Mr. Chairman, that I have additional matter to offer, but I prefer to look over these papers before offering it.

Senator HITCHCOCK. Well, I think if the Senator has anything to offer he should offer it now.

I will offer that part of the Congressional Record of May 21, 1912, containing a portion of a speech by Senator Stone of Missouri, quoting authorities for the assertion that the International Harvester was seeking by corrupt means to control the Republican Party, beginning two lines below the top of page 6860 of the Record for that day and ending within three lines of the bottom of the first column on page 6861.

Senator SHAFROTH. Mr. Chairman, I do not think that that would be proper in a committee report; I think it is all right in your speech to get up and hurl it at them; but it does not seem to me that it comes proper in a report of the committee.

Senator HITCHCOCK. Would the Senator like to have the question submitted to a vote?

Senator SHAFROTH. I think that——

Senator POMERENE (interposing). When was that speech delivered?

Senator SHAFROTH. 1912.

Senator HITCHCOCK. May 21, 1912.

Senator SHAFROTH. But I never heard of a speech made by a Senator on the floor of the Senate being incorporated as a part of a committee report; that is the only objection.

Senator HITCHCOCK. Does the Senator desire to have it submitted to a vote?

Senator SHAFROTH. Well, I do not know; I merely make that suggestion.

Senator HITCHCOCK. Otherwise it will go in with the Senator's objection.

Senator HOLLIS. I ask to have a vote on it.

Senator HITCHCOCK. Senator Reed?

Senator REED. I will ask you to excuse me.

Senator HITCHCOCK. I think you ought to vote on it.

(Thereupon a vote was taken.)

Senator HITCHCOCK. The vote stands 5 ayes and 4 noes, one not voting. The motion is carried; the speech will go in the record.

Senator BRISTOW. Has the letter of the President in regard to Mr. Jones been incorporated in the record?

Senator HITCHCOCK. It has not.

Senator BRISTOW. I would like to have that incorporated.

Senator SHAFROTH. What is that?

Senator BRISTOW. The letter of the President to Senator Owen.

Senator HITCHCOCK. Is there objection to that? The Chair hears none; it will be incorporated.

Is there anything further to offer to complete this record?

Senator LEE. I have a letter from the defendant—I think I had better call him that—which I would like to submit as part of the evidence.

Senator HITCHCOCK. What is that?

Senator LEE. I have a letter from Mr. Jones bearing upon certain portions of his testimony and the Interstate Commerce Commission report.

Senator HITCHCOCK. You will submit that?

Senator LEE. I would like to submit that letter, with such other statement as he may make after he has had an opportunity to review this record. I have sent him already a copy of his testimony in this matter; and I would like to send him a copy of this, what might be called an attack on his testimony. I think it is only fair to the witness that he should have it and have a chance to reply to it.

Senator HITCHCOCK. I will say that a copy of the testimony was sent him some time ago.

Senator LEE. Yes. I sent him a copy also.

Senator REED. It seems to me very peculiar, now, after a man has been brought here and given an opportunity to tell his story on the stand, in the presence of the whole committee, that he should ask the privilege of supplementing that testimony by any letter or statement—unless he simply wanted to correct an inaccuracy, which privilege might possibly be accorded him.

Senator POMERENE. Well, Mr. Chairman, he ought to have a right to reply to a matter which has been presented here.

Senator HITCHCOCK. Will you present your motion, Senator Lee?

Senator LEE. My motion is this: I move that the nominee, Mr. Thomas D. Jones, be given an opportunity to look over the additional testimony that is being taken, or other matter in the nature of testimony, and be given an opportunity to make such reply or rejoinder or explanation as he may see fit.

Senator REED. Mr. Chairman, what will we do then with this situation—which we all know? Yesterday, when this matter went over, it was demanded of the Senator from Nebraska [Mr. Hitchcock], as the acting chairman of the committee, when this report would be ready; and his reply was that it would be finished to-day and ready to be brought before the Senate.

Senator BRISTOW. Why can not that be submitted later?

Senator LEE. I do not think that that reply of Senator Hitchcock was binding upon either him or the other members of the committee. If that is a law of the Medes and Persians which can not be altered, we have got into a very peculiar stage. But this is a perfectly fair proposition; and I think if the Senator has any objection to it, he ought to argue directly to the proposition.

Senator NELSON. Well, I will offer an amendment to that motion that, in the meantime no report on this nomination be made to the Senate.

Senator LEE. I will accept that amendment with pleasure. Of course that was implied, Senator Nelson.

Senator NELSON. Yes; that this nomination shall not be reported to the Senate until the record is complete and printed.

Senator LEE. Certainly.

Senator HITCHCOCK. I think that would be a great mistake, because this report has been promised; and it is proposed to wait simply for a statement from Mr. Jones, when he has had every opportunity to make his statement here.

The motion on the first suggestion of Senator Lee I thought was reasonable, that a letter which he has already received from Mr. Jones be placed in the record, but to throw the matter open and give him an opportunity to send a written statement of his case I do not consider proper as a record of the committee. It might be proper to read the letter to the Senate, but it is not part of the committee records.

Senator POMERENE. Mr. Chairman, there has been a vast deal of new matter introduced here. It may be that it affects only the International Harvester Co.; but it affects the company with which Mr. Jones is connected, and that connection is attacked. Now, it is a right even of a common criminal to be permitted to reply to evidence against him, and Mr. Jones ought to have every reasonable opportunity to reply to whatever these charges are. I do not know whether there is anything that is material in those documents or not, but I do not think that this committee, or any member of the committee, would desire the report to go out, even to the Senate, to the effect that new matter was introduced here and that we foreclosed the opportunity for the man who was attacked to answer such new matter.

Senator BRISTOW. Nobody is in favor of that, Senator.

Senator POMERENE. That is the effect of it. Personally I know that, but that is the effect of it.

Senator REED. Let me answer that suggestion. I fully agree with Senator Pomerene.

Senator POMERENE. Certainly.

Senator REED. That if there is any attack in any of these documents upon Mr. Jones, before this case is closed, he should be given the most abundant opportunity to explain it. Nobody would be more insistent upon that than myself.

But what are these attacks? Of course, the committee has not seen them. But this is the character of them: The Bureau of Corporations made a report upon the International Harvester Co., not upon Mr. Jones, and that is introduced, or such parts of it as I thought were pertinent. There is not a word in the report reflecting upon Mr. Jones in any way, except that it simply shows the character of this company.

As to the decisions of the courts which have been offered, as far as I know not a single one of them mentions Mr. Jones by name, except the petition in the Government suit which is now pending at St. Paul, and that was all gone over when Mr. Jones was here.

Senator LEE. Do I understand the Senator to mean that Mr. Jones is not affected by these International Harvester suits?

Senator REED. Oh, no; the Senator fully understood me when I said that they did not touch him personally; they touch this organization with which he is now connected. And I want that to go in, so that Senator Pomerene will understand me——

Senator POMERENE. Yes.

Senator REED (continuing). When I say that I am not trying to make an attack upon Mr. Jones and then shut him off from a reply.

Senator POMERENE. I understand you. But this is my position, to be more specific: The complaint against Mr. Jones is not against Mr. Jones the man; it is against Mr. Jones because he is connected with this corporation which has violated the law; and the effect of the introduction of this evidence is this: First, it is a direct attack against the International Harvester Co.; but, by innuendo it attacks Mr. Jones. It may be just as damaging as if it were a direct attack on him; and for that reason it seems to me that there should be full opportunity given him for a reply, if he so desires.

Senator NELSON. What more could Mr. Jones do than make an argument against these public documents?

Senator POMERENE. I do not know; I have not read them.

Senator NELSON. He could simply file a brief or argument showing that the courts were mistaken, or the reports were untrue.

Senator LEE. Mr. Chairman, it has already been shown here this morning that Senator Reed by accident omitted the letter of the Interstate Commerce Commission which gave some explanation of the actual worth of its examiner's report. Now, that was entirely an accident; and there may have been a great many more accidents, of very serious import, of the same kind.

Now, here are 53 typewritten pages describing the management of these mining company railroads—the roads of this zinc concern. In the hurry I have been subjected to, I was able to have copied two of these pages and send them to Mr. Jones; I had not time to have anything more cop ed. I think he ought to have an opportunity to see this entire proposition. He is connected with this zinc concern, and this is one of the attacks upon him and his character and capacity to fill the office to which he has been nominated.

Senator REED. The Senator says this letter [indicating] was omitted by mistake. Now, there is not a word in this letter that would alter or affect the conditions. The first paragraph relates entirely to a description of what is sent; and then follows the statement:

> Any expression of views to be found in the report of the examination mentioned is to be understood to be the views of the examiner. The commission itself has not passed upon the facts developed in the report.

Now, all that appears plainly upon the face of the report; and it was wholly unnecessary for him to state it; and it would have been apparent if he had not stated it. It was a proper statement to be made, however.

Senator POMERENE. Mr. Chairman, I have never heard that where a Senator had a fair reason for getting an explanation of any kind from a person being directly investigated it would not be granted; it seems to me that it would be very wrong to deny it.

Senator BRISTOW. It seems to me that the minority are trying to make up the majority report of the committee. The majority have certain ideas of the report they desire to make, and which they have the right to make; the minority have the same right; and I think the majority ought to make its report as it wants it, and that the minority should have the same right.

Senator POMERENE. This is not making up a report; it is making up a record, from which the report, the conclusions of the committee, will be drawn.

Senator REED. The only objection in the world that I have is the one of delay. We are being accused of holding up the whole Federal Reserve Board; but if the friends of Mr. Jones and those who appear to be specially interested in his confirmation want time for Mr. Jones to examine this record, and the Senate will permit it, I will not make any objection; I want to give him every chance.

Senator SHAFROTH. There has been no agreement by the Senate as to when the report shall be made. It was simply a statement by the acting chairman; and he can simply say that the matter has gone over for that purpose, if he cares to do so.

Senator HITCHCOCK. I have a suggestion which I think will meet the views of both sides; and I will lay this before the committee as a

substitute for the motion: That after the report of the committee and the views of the minority have been printed and the record of the case has been presented to the Senate, copies of the same shall be sent to Mr. Jones and he shall have the opportunity to present an answer to any new matter affecting him, with appropriate exhibits, which shall be printed as a supplementary record in the case.

Senator HOLLIS. Mr. Chairman, I would like to make a statement about this matter.

It is the proposition of the majority of this committee to print this report and spread it broadcast for some purpose. And as it is to go out broadcast and is to be the report of the committee and the record of all the evidence, it should contain all the evidence; it should not go out piecemeal.

Mr. Jones is under attack here. The only decent and legal way to treat a man who is under attack is either to furnish him with a copy of the specifications of his misdeeds and give him an opportunity to answer those, or else go on with your hearing and make your charges and put in your evidence, and then give him an opportunity to put in his evidence to meet it.

We have not done that. We sent a nice pleasant telegram to Mr. Jones asking him if he would not meet with this committee; and he came on without counsel and unsuspectingly answered such questions as were put to him, and those only. He was not invited to make a statement. He could not make a statement, because there were no charges against him; but he just came here and answered such questions as were put.

Then that is printed; and then those who are opposed to him go to work industriously and dig out everything they can find against him and want to put it in the record and print it and publish it to the world, without Mr. Jones's answers to that evidence or those charges.

I submit that Mr. Jones is entitled to see the record which contains the evidence that is produced against him and then to answer it and produce such further evidence as is fair to present his side of the case; and that to send out a one-sided part of the record that is got up by those who are opposed to him, and not give him an opportunity to answer it, is contrary to all American ideas of fair play and to the rules of any court.

Senator NELSON. I want to ask, How can he see this record unless we have it printed and in type?

Senator HOLLIS. We can have it printed, as far as we have gone, and have it sent to him before it is completed.

That is all I desire to say.

Senator SHAFROTH. Yes; it can go to the printer; we have no objection to that.

Senator REED. I do not think the statement ought to be made here, and repeated, that somebody is trying to oppose Mr. Jones and treating him unfairly.

Senator HOLLIS. I said this would be treating him unfairly, not to give him an opportunity to reply. That is my position.

Senator REED. We are not trying a lawsuit; we are investigating with reference to Mr. Jones. Now, Mr. Jones came here and presented the appearance and manner of a gentleman; and he was given the fullest opportunity to explain his connection with the Harvester

Trust. During the course of that investigation, or that testimony, he was asked a question with reference to his acquiescence in the acts of the Harvester Trust since he became a director in it. He stated that he had acquiesced in all of those acts, and that they had his hearty approval.

Now, the records that have been put in bear simply upon that company, its original organization and its course of conduct since; and they are all public documents, official in their nature; and that is all that was introduced. Nobody has been out raking around trying to get evidence against Mr. Jones personally.

Senator HOLLIS. Do you make that statement deliberately, Senator Reed, that no one has been raking around getting things against Mr. Jones personally?

Senator REED. I make the statement that, so far as I am concerned, and so far as I have any knowledge, that is true. Of course, I should not say that nobody in the world has been trying to do something of that kind; because I could not speak for the whole world.

But all I have done was to have some telegrams sent to ascertain what suits had been brought against the International Harvester Co., and where the official records could be found, and to have one of the young gentlemen in my office go down and get the records, as far as we had them here in the Government offices.

Now, I do not want to be put in the light of having done anything else than that, because I have no personal warfare to make against Mr. Jones.

Senator HOLLIS. What is objected to is this: If it was not for the attempt to print this record and distribute it, of course there would not be any objection to this procedure. But when it is proposed to print the report and the report of the committee and publish it to the world, then it is unfair to Mr. Jones to produce a mass of evidence here after he has appeared before the committee and not give him an opportunity to reply to it. That is the idea.

And I understood Senator Reed to say a few moments ago that it was unfair not to give him an opportunity to reply to it.

Senator REED. I am willing to give him an opportunity to explain anything introduced here. But I am calling your attention to this fact, that if we take the course now suggested it means a delay of probably 20 or 30 days.

Senator LEE. Twenty or thirty days?

Senator REED. I think so.

Senator HOLLIS. Those who are responsible for printing this report are responsible for that; I do not object to it.

Senator REED. Of course, that 20 or 30 days is a mere estimate; but it will take two days to have this record printed.

Senator SHAFROTH. We have no objection to having this record printed immediately.

Senator REED. And, then, Mr. Jones may want to confer with the attorneys of the International Harvester Co. and prepare some sort of reply. However, rather than treat Mr. Jones unfairly and put the committee in that light, I would consent to anything.

Senator BRISTOW. I can not understand the Senator's position. There are to be two reports—the majority and the minority reports—but there is only one record of the evidence.

Senator LEE. We are going to close the hearings——

Senator BRISTOW (interposing). Oh, no; I do not understand that. When this record is printed and the report of the majority is prepared your minority report will contain anything you want.

Senator LEE. No, sir; you propose to close the hearings; that is your proposition.

Senator BRISTOW. No; I do not propose to close the hearings; I do not think anybody does.

Senator REED. Is it necessary to take all this colloquy and print it?

Senator POMERENE. Let me suggest this: If the proposition of Senator Hitchcock is to prevail here, every word that is contained in this colloquy ought to be printed.

Senator HOLLIS. There is no doubt about that.

Senator POMERENE. Let me say a word. The immediate question is Senator Hitchcock's proposal. What is it? First, that there shall be reported all the evidence up to date; second, a finding, not on all the evidence that may be in the record, but on the evidence introduced to-day, with a formal finding of the majority—not on the complete evidence.

Now, I have heard of justices of the peace who were very willing to decide a case after the plaintiff had introduced all of his evidence, and could decide it with the entire approval of themselves. But they would become embarrassed when the defendant's evidence was in. That may be so here; and I do not see how this committee can make up a report without knowing what this evidence is. I do not know what it is going to be. I do not know whether there will be anything here that will change the effect of this; but there may be.

Senator REED. I beg to suggest that the case has been decided. The committee has already voted.

Senator HOLLIS. Then print what it was decided on. That was on the testimony of Mr. Jones; and now you have introduced other evidence.

Senator BRISTOW. What additional evidence has been put in to-day?

Senator REED. Simply the Government reports, and a list of cases. But they have objected to putting it in. I do not care; I will bring it in on the floor of the Senate.

Senator WEEKS. Mr. Chairman, as I see this case there is no reflection on Mr. Jones's character or Mr. Jones's capacity as a business man, as was suggested by the Senator from Marylamd. As I see it, it is simply an objection because he is a director of a corporation at the present time and has been in the past which is charged with doing illegal acts.

I do not care a thing about this record, so far as I am concerned. I am voting against Mr. Jones for that reason, and for that reason alone.

But if there is objection to any step which is being taken, and about the manner in which this report shall be made I think the objection ought to be heeded. I do not think there ought to be a scintilla of doubt in the minds of any member of the committee that Mr. Jones has had a fair show before the committee; and my judgment is that he ought to be notified that other matters not connected with his examination but which are largely court records, have been included

in the records of the committee and will be used in considering his case; and he should be asked whether he wants to appear again, or whether he wants to in any way comment on the matter that has been added since he appeared before the committee.

Now, that is my view of it. Personally I do not care a tinker about these court records at this time.

Senator CRAWFORD. That is my feeling about it. But I do not believe. under any circumstances, in ever putting the committee, or any tribunal, in the attitude of not having given the other party, who may feel very sensitive, and whose general attitude, so far as the whole country is concerned, is one of vital importance to him—I do not want to be in the position of in any way foreclosing him; and I would rather see the matter held, even if it delays the report a little, so that if Mr. Jones feels that in justice to himself he ought to have a further hearing here, he may have it.

Senator SHAFROTH. In the meantime, the evidence as far as it has gone can be put in print, so that we can all see it. I do not know what all this is.

Senator CRAWFORD. My position is exactly what Senator Weeks's position is, so far as Mr. Jones is concerned. I formed a very high opinion of him; I liked his frankness and liked the man. But he is connected with that company, and that company had a voting trust; and here are Mr. Perkins and Mr. McCormick and Mr. Deering the absolute arbiters of all he did. Now, I can not vote, on account of that general situation, for Mr. Jones; but I do want Mr. Jones to be treated fairly, so far as any rights he has, or any desire he may have to protect himself before the public, is concerned, and I do not want to have anything done here that would look like printing a report in advance of giving him an opportunity to be heard in regard to it.

Senator NELSON. Mr. Chairman, I do not want to take up the time of the committee; but it seems to me that the fairest way would be to have this record printed privately, and send Mr. Jones a copy of it, and then give him an opportunity to reply. Now, we can not give him this information by writing him a letter and calling attention to the offers here; he ought to have the whole record as we are going to have it printed.

Senator LEE. That is what we propose.

Senator SHAFROTH. Yes; I think so.

Senator NELSON. And my idea is that we ought to have this record printed as we have got it now—everything—and send it to Mr. Jones and ask him to make such reply to it as he sees fit, as rapidly as possible, and then hold the case and not report it to the Senate until we do get his final answer.

Senator POMERENE. I think in the letter of instructions which we send to him we ought to place a reasonable limit upon the time within which it should be answered.

Senator NELSON. That is why I made the amendment to your motion, Senator Lee.

Senator LEE. Yes; I accept the amendment.

Senator REED. Your proposition is to let Mr. Jones reply to any new matter?

Senator LEE. Yes.

Senator SHAFROTH. Yes; any new matter.

Senator BRISTOW. If we do that, he will probably get the lawyers of the International Harvester Co. to come here and prepare a brief, and I think we would probably have to receive them.

Senator REED. Rather than have the delay, I should prefer to withdraw these records which I have offered, submitting the case upon Mr. Jones's own statement and the record as made up the other day—the matters that were then introduced, and introduced without objection and accepted, and which was the record at the time we voted upon this case. And the rest of it I will see gets into the records of the Senate in my own way.

Senator LEE. I object to any change in this record, or any change in this stenographic report. It is of importance in determining the value of the report of this committee, and the Senate is entitled to have it.

Senator HITCHCOCK. That is not the Senator's motion.

Senator BRISTOW. The committee has already made its decision; it has voted. Now, Senator Reed's motion is that the record be made as it was when we took the vote, and that this subsequent material be left out. What objection have you to that?

Senator SHAFROTH. What Senator Reed offered was not read. He said, "I want to introduce a Missouri decision; I want to introduce so-and-so;" and he had a great big book, in which certain items were read, and he never finished it at all; and we were trying to expedite things; and that is the reason we were willing to take a vote at that time.

Senator REED. That is all I want to put in—what was put in at the time we voted. I thought the committee ought, in fairness, to have this matter before it before it was submitted to the Senate; but now I am willing, rather than to have this delay hold this appointment up, and hold the country up all the time that will be involved, to simply withdraw the new offers that I made this morning.

Senator HITCHCOCK. Are you ready for the question?

Senator SHAFROTH. I would like to look at the records myself.

Senator BRISTOW. We are simply taking the decisions against the International Harvester Co. and permitting that corporation to make its defense to the public, which will be done at the public expense; and I think it has had favors enough from the people of the United States; and so let us go back to where we were and let it take care of itself.

Senator POMERENE. Who has suggested defending the International Harvester Co.?

Senator BRISTOW. Well, Mr. Jones, then; they are his counsel; he is relying upon their counsel to answer these court charges; let him do it himself; he will get the help of the Harvester Trust lawyers.

Senator SHAFROTH. He is a lawyer himself; the chances are he will do it himself.

Senator BRISTOW. He said in his testimony that he followed the advice of the attorneys for the company in all of these affairs.

Senator HOLLIS. I think we ought to have the record printed to date for our use. Then we can tell what was put in the other day; whether there was enough in to be a fair presentation of it, and then we can decide what we will have in.

Senator SHAFROTH. I believe in letting a man print what he wants to; but I think there ought to be an opportunity to answer it.

Senator BRISTOW. The place for them to defend themselves is in the courts.

Senator HITCHCOCK. The motion of Senator Reed is to withdraw all documents offered by him as a part of the record, since the evidence was taken upon the taking of a vote.

Senator LEE. Mr. Chairman, I make a point of order against that motion, as it practically is an effort to wipe out the entire record and proceedings of this committee, and that this committee can not itself alter the record, and that for this committee to wipe out what it has done or tried to do here this morning would be a suppression of information or of the truth.

Senator HITCHCOCK. But that does not affect the stenographic report of the committee—it affects the offer.

Senator SHAFROTH. Did you not make a motion some time ago, Senator Lee.

Senator LEE. I did, and it was not acted on.

Senator HITCHCOCK. What was the Senator's motion?

Senator SHAFROTH. That Mr. Jones be given an opportunity to be heard.

Senator LEE. I did, and Senator Nelson amended it.

Senator NELSON. My amendment to the motion of the Senator from Maryland is that we have the entire record printed as it is now, and that a copy of it be sent as soon as possible to Mr. Jones and that he be requested to make such reply to it as he desires as soon as he can, and that in the meantime no report on this nomination be made to the Senate.

Senator LEE. That substitute is entirely satisfactory to me.

Senator WEEKS. Mr. Chairman, I want to make this suggestion, that that will cause considerable delay, and perhaps unreasonable delay. If Mr. Jones saw fit to come here at once, and bring his attorney, if he likes, we might save several days of delay, which would be incurred if we sent the report out there.

Senator LEE. There is no objection to putting in the motion a limitation of time.

Senator NELSON. What limitation would you consider fair?

Senator LEE. Give him four days.

Senator SHAFROTH. After the receipt of the report?

Senator NELSON. Yes; give him five days.

Senator LEE. Yes.

Senator SHAFROTH. Yes.

Senator HITCHCOCK. My judgment is, gentlemen, that this committee has decided this question. The records show that we came to a vote upon the nomination of Mr. Jones, and we voted 7 to 4 against it.

Senator LEE. Do you rule this out of order?

Senator HITCHCOCK. I was authorized to make a report, which I have drawn, and which I intended to present to the Senate to-day. Senator Reed at that time reserved the right to offer certain testimony. He has offered that testimony this morning, and objection is made that Mr. Jones should have an opportunity to reply to it. Rather than submit to that delay, Senator Reed withdraws the testimony, or desires to do so.

Senator SHAFROTH. Can a plaintiff in a case withdraw testimony that has already gone to the jury?

Senator REED. This is not a jury; the verdict is in.

Senator NELSON. I withdraw my motion.

Senator WEEKS. Mr. Chairman, I just want to say that it seems to me that there is an apparent attempt here going to be made to becloud the issue in this case.

I do not want any possibility that anybody can say—I do not want any possibility that any Senator can say that Mr. Jones has not been treated with absolute fairness. Mr. Jones should be treated on his merits as a man and an officer of a corporation. I think I detect in the atmosphere here a suggestion that there is going to be a claim made that he has not been treated fairly.

Now, I hope Senator Nelson will not withdraw his motion; and, although I think this delay is unnecessary and more or less unreasonable, yet I hope the delay will be granted, so that there may be no possibility that anybody can say that Mr. Jones has not been treated fairly.

Senator MCLEAN. I think Mr. Jones ought to be allowed to speak, because any delay would be at Mr. Jones's request. I think we are wasting time and money here by stuffing this record. There is not a part of those documents that is not a public record and open to the public; there is nothing concealed about it; there is nothing in it that the Senator can not use in public to-day if he wishes to; and it seems to me we are going to great expense to make this record as large as it is.

But we have consented to it so far, and the Senators who favor Mr. Jones feel that injustice will be done if we stop here and do not allow Mr. Jones to present whatever he may desire, and I agree with the Senator, and if that is their request and they put it in that way, I should not vote against it; I could not vote against it, although I think we make a mistake and waste a great deal of time and money, as I said, in printing this great document, which has nothing in it which is not at the command of any Senator or other person who is inquisitive enough to want to know what it is.

Senator REED. Let me just offer this observation: This case was taken up, the evidence was introduced, and upon the evidence the case was decided.

Now comes the question of a record, of a report. It struck me that the majority of the committee would have the right in making its report to use any public document or any court record that it saw fit. It is not even commenting on the evidence here.

But I thought, in view of the fact that these items were somewhat voluminous, that they ought to be formally introduced in order that they might be printed as part of the record and not part of the report. That was my object in offering them. I never had the slightest idea of doing any injustice to Mr. Jones nor of anybody requesting any delay.

I have offered to withdraw them and the Senators who objected to their being offered in the first instance now object to their being withdrawn. That is the situation.

The question before the committee ought to be whether these will now be printed as a part of the record or not. If that is determined in the affirmative, then the question will come of giving Mr. Jones an opportunity to be heard.

I agree with Senator Weeks, that if there is any chance here of anybody claiming that Mr. Jones has been mistreated, I would prefer any reasonable delay to any such claim as that being made.

Senator POMERENE. Mr. Chairman, I always deal in perfect frankness in these matters; and I would unhesitatingly and unequivocally say, in public and in private, that the majority of this committee has been most unfair if they will attempt to print this record and make a report on matters that are so vitally connected with the reputation and character of this appointee without giving him an opportunity to be heard with respect to this testimony.

Senator BRISTOW. Now, Senator Pomerene, suppose that we print the record as it was made the day we voted, and that all subsequent matter be left out; then where is Mr. Jones injured?

Senator POMERENE. But, my dear friend, that is the effect of the statement of my good friend to the left [Senator Reed] that he would see to it that all this stuff gets into the record.

Senator BRISTOW. That is when he makes his speech; and then you will have the right to say anything Mr. Jones desires in answer to anything Senator Reed says which goes into the record.

Senator POMERENE. We came to a certain conclusion here, and all of us were somewhat negligent in this respect, that we attempted to vote and did vote, either for or against the report, without having the evidence before us, but simply with a statement that we would introduce certain records; and my good friend here [Senator Reed], I dare say, was not familiar with all the details of what he proposed to offer at that time; neither were any of us.

And now we are seeking here to come to a conclusion, a verdict, a decree, if you please, upon a given matter, without having the full evidence before us.

Senator BRISTOW. Now, just to show how unfair you are about that: The judgment has been rendered, so far as this committee is concerned, on the record, as it was made at the time the vote was taken.

Senator SHAFROTH. The committee could reconsider it before it is reported.

Senator BRISTOW. But it has not reconsidered it; and it will not consider it. I am talking about the record that was made at that time. The vote was taken upon the record as it was. Now, the proposition is, Shall the record as made at the time the vote was taken be embodied in the report? I have no objection to this subsequent matter being treated as a subsequent proposition, as argument, or anything else, and a copy being made of that; but I certainly object to a reconsideration of that proposition, unless the committee sees fit to reconsider the vote the committee took.

Senator LEE. It would be very proper for a motion to be made to reconsider it.

Senator HITCHCOCK. I will state the situation: Senator Nelson has withdrawn his amendment.

Senator NELSON. My motion.

Senator LEE. No; I made the motion and accepted Senator Nelson's amendment, and the Senator can not withdraw it.

Senator NELSON. I made a motion as to sending the testimony——

Senator LEE (interposing). I accepted it as a substitute.

Senator HITCHCOCK. Senator Nelson has withdrawn that and Senator Reed has offered a substitute to Senator Lee's motion.

Senator LEE. I make a parliamentary objection to that ruling, Mr. Chairman. I had accepted Senator Nelson's amendment as a substitute for my motion; hence it is my motion, and I do not withdraw it.

Senator HITCHCOCK. Very well; that was before the committee, and Senator Reed offers as a substitute for that a motion to withdraw all documents offered since the vote on the report was taken, and a vote will now be taken on that proposition.

Senator HOLLIS. Just a moment, Mr. Chairman; I think that is not a proper statement. Do you mean all documents presented since the vote was taken?

Senator HITCHCOCK. All documents presented since the vote was taken?

Senator LEE. I would like to ask whether the effect of this motion would be that all the record of to-day is canceled.

Senator HITCHCOCK. The motion is to withdraw all documents presented to make up the record in this case since the vote was taken by the committee reporting the nomination.

Senator SHAFROTH. Does that mean that if we want to introduce anything to-morrow morning we can not introduce it?

Senator BRISTOW. No; you can introduce anything you want to.

Senator SHAFROTH. I think it does—as a part of the record.

Senator LEE. I want to make a comment on that proposition, that Senator Reed is wrong, according to my memory, when he states that there was an objection to putting these records in. In fact they were accepted without objection nearly universally. I made some objection to the Interstate Commerce Commission examination by an examiner being put in unless it was prefaced by the letter of Commissioner Harlan. That objection was met by putting in the letter of the chairman; so the whole thing goes in without objection.

Senator HITCHCOCK. Senator Reed, does that seem to avoid delay?

Senator SHAFROTH. It is strange that there should be such a desire to avoid delay when this man is not occupying the position; there is no harm done by it.

Senator LEE. Mr. Chairman, I want to go on record that these proceedings having been held and this testimony offered, and these comments and remarks and suggestions having been made, they are a part of the record of this committee; and it is beyond the power of this committee to expunge its own records.

Senator HITCHCOCK. The motion does not contemplate a change of the stenographic report; it simply avoids the printing of the records, which were offered.

(Thereupon the roll was called for a vote.)

Senator REED. I am going to vote "aye," and give my reason, simply because I do not want this matter to be held up indefinitely.

Senator POMERENE. I vote "no," especially because all this matter which it is now proposed to be eliminated will be used in the determination of this case.

The following Senators also voted in the affirmative:

Nelson, Bristow, Crawford, McLean, and Hitchcock.

The following Senators also voted in the negative:

Shafroth, Hollis, and Lee.

Senator HITCHCOCK. The vote stands 7 to 4, and the motion is therefore carried, and the documents will be withdrawn.

Senator LEE. Mr. Chairman, I want to make an inquiry as to how this stenographic report is going to be printed, with or without the documents?

Senator HITCHCOCK. It will be printed without the documents.

Senator LEE. Well, I will repeat the point of order that I made before, that it is not within the power of the committee to change its own records; nor is it within the power of counsel to withdraw testimony when it is once offered for or against any given proposition before any American tribunal.

Senator HOLLIS. Mr. Chairman, I now move that the chairman be requested and that the members of the committee be requested not to give out any information as to what has taken place in this meeting.

Senator HITCHCOCK. Are you ready for the question?

Senator BRISTOW. That does not mean that the report shall be not made to the Senate in the regular way?

Senator HITCHCOCK. It does not change the reports that will be made. My report will be filed to-day.

Senator BRISTOW. Then I have no objection to make.

Senator HITCHCOCK. It simply means that no information is to be given out concerning the proceedings of this committee.

Senator SHAFROTH. Mr. Chairman, I object to any report being made until the record is printed, so that we can have an opportunity to make the minority report at the same time.

Senator HITCHCOCK. Well, the minority report was to be made to-day.

Senator SHAFROTH. Well, we do not know what this record that Senator Reed read contains, and the mass of documents and things of that kind. I tried to listen to them; but sometimes a person would come in and talk to me; and I have not any idea what they were.

Senator HITCHCOCK. Senator Hollis moves that no member of this committee, nor the chairman, give out any information concerning the proceedings of the committee to-day.

(The motion was unanimously adopted.)

Senator POMERENE. Mr. Chairman, I move that a stenographic copy of the testimony which was offered here to-day, as well as on the 9th of July, and a copy of the comments as they were given here be furnished to Mr. Jones, so that he may have an opportunity, if he so desires, to make a reply to the same.

Senator BRISTOW. Let me ask you, Senator Pomerene, when it is not a part of the record, when it is simply blank, why do you want to go to all of that trouble now—when it is not a part of the proceedings of the committee, so far as its report is concerned?

Senator POMERENE. My good friend, if you were on trial for an offense, and evidence were introduced in the record before the jury——

Senator BRISTOW (interposing). Now, who is the jury in this case?

Senator POMERENE. Just let me finish, please. Introduced in evidence, and that is to be used in the argument; it is to be used when the jury gets in session, and comments are to be made thereon, and it is expected that those comments and that evidence shall have

an effect when the Senate is going to determine whether it would advise or consent to this appointment——

Senator BRISTOW (interposing). Let me tell you what your motion is. That Senator Reed's speech in the Senate be given to Mr. Jones in advance, in order that he may answer it. That is what the motion means.

Senator POMERENE. Not at all.

Senator NELSON. Senator Pomerene, I want to call your attention to the fact that now all the record we have is simply a part of the record of the court in that Missouri case. That is all there is. Am I not correct, Senator Reed?

Senator REED. That is correct—and Mr. Jones's testimony.

Senator NELSON. Senator Reed offered the other day the petition in quo warranto proceedings, the notice to show cause; the reply of the defendants, and then, as I recall it, he read a part, but did not finish it, of the report of the commissioner appointed to take testimony. Now, that is all that is in the case.

Senator REED. I offered that, and I offered the judgment of the court, and the judgment of the Supreme Court.

Senator NELSON. Yes; that is the whole thing.

Senator POMERENE. No; also with this statement, that if those were ruled out——

Senator NELSON (interposing). Now, what you are stating is entirely groundless. There is nothing in the record but that.

Senator POMERENE. No; pardon me; you have only stated it partially. The withdrawal was accompanied with the statement that these records, and so on, would find their way into the record.

Senator REED. Not into this record.

Senator POMERENE. I understand that; but into the record in the Senate, which is going to have its weight in the determination of what the Senate is going to do.

Senator NELSON. How can you prevent that, Senator Pomerene; how can you prevent any Senator from reading those documents in the Senate?

Senator POMERENE. I can not.

Senator BRISTOW. You have just as much right to ask that I send my manuscript of my speech to Mr. Jones to permit him to answer it.

Senator CRAWFORD. Are we not going too far? If I had to do it over again, I would not vote to put Senator Stone's speech in.

Senator HITCHCOCK. It is not in; it is all withdrawn.

Senator CRAWFORD. I am glad of that; I do not believe we ought to put that in.

Senator HITCHCOCK. Gentlemen, we are needed upstairs in the Senate.

Senator HOLLIS. Before we adjourn I want to make a motion about reporting to-day.

Senator SHAFROTH. Yes; and I think it ought to be insisted on. Whatever record has been made here I do not know the contents of it; I do not know the accusations in the Missouri case. It seems to me that when that record is made up, eliminating those documents, etc., it ought to be sent to Mr. Jones, limiting his time to reply to four days.

Senator REED. I have not the slightest objection.

Senator HITCHCOCK. By unanimous consent a copy of the proceedings of to-day will be sent to Mr. Jones.

Senator SHAFROTH. And that no report be made until then.

Senator HITCHCOCK. The motion did not state that.

Senator POMERENE. Does the record show that my motion was stated?

Senator HITCHCOCK. I was trying to state the motion.

Senator POMERENE. You said by unanimous consent this would be done.

Senator HITCHCOCK. I said by unanimous consent a copy of to-day's proceedings could be sent to Mr. Jones. I think he should have a copy. He will then take whatever action he deems wise.

Senator POMERENE. That is the substance of my motion.

Senator HITCHCOCK. Substantially that is it.

Senator LEE. That includes the whole record of to-day?

Senator POMERENE. Is this done by common consent?

Senator HITCHCOCK. This is done by common consent.

Senator HOLLIS. I move that no report be made to the Senate on the nomination of Mr. Jones until the minority have had an opportunity to examine the report of the majority and prepare a minority report.

Senator REED. Mr. Chairman, we might as well ask that no majority report be made until the minority report has been filed and we had had an opportunity to examine it.

Senator HOLLIS. That would be all right.

Senator HITCHCOCK. It would be necessary to reconsider the vote by which the acting chairman was authorized to make the report.

Senator HOLLIS. When was he instructed to make the report?

Senator HITCHCOCK. At the last meeting of the committee.

Senator POMERENE. Just move to reconsider it.

Senator HOLLIS. No, I can not. This is merely to see that the minority has a chance to see the majority report. I am making up the minority report. I think the committee will vote me down.

Senator SHAFROTH. Generally the majority report is made, and then the minority report is printed right in the same pamphlet.

Senator HOLLIS. I ask to have a vote on that motion.

Senator HITCHCOCK. Senator Hollis moves that the majority report be withheld until it shall be submitted to the examination of the members of the minority.

Senator WEEKS. Before you put that, I want to call attention to the fact that, as I understood it, the chairman gave notice on the floor of the Senate yesterday that he was going to make the report to-day, and there was no protest.

Senator SHAFROTH. That may be; but he can give notice to-day that he will not make any report to-day.

Senator REED. I move as a substitute to the motion that the right of the minority of the committee to make such report as it sees fit at such time as it sees fit, is reserved.

Senator HITCHCOCK. Are you ready for the substitute?

(Thereupon a vote was taken.)

Senator HITCHCOCK. The motion is carried in the form of the substitute offered by Senator Reed.

(Thereupon, at 1.20 o'clock p. m., the committee adjourned subject to the call of the chair.)

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